



THE
HUDSON'S BAY COMPANY'S
LAND TENURES

ARCHER MARTIN



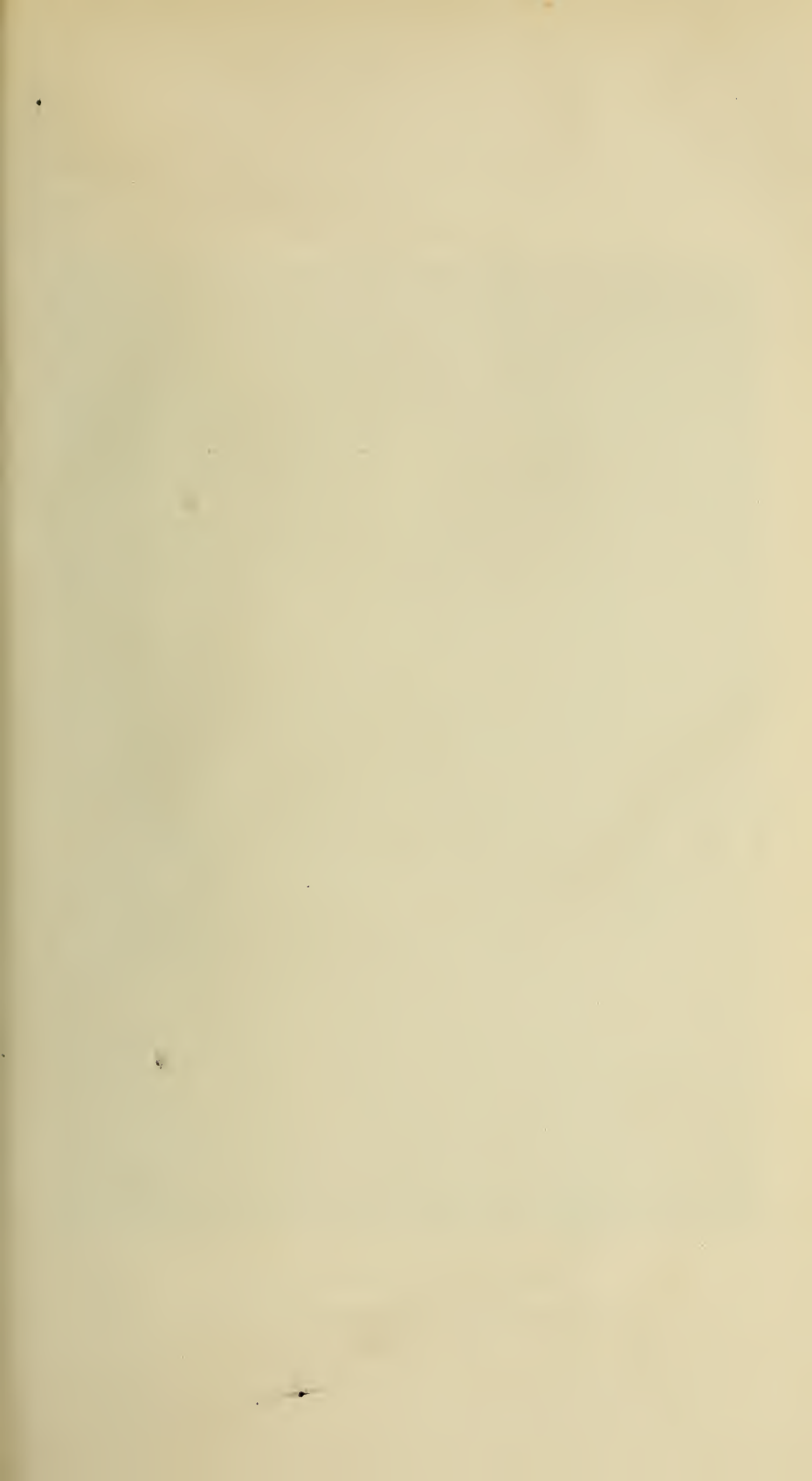




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PORTRAIT OF PRINCE RUPERT.

From the Original in Hudson's Bay House, London.



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THE
HUDSON'S BAY COMPANY'S
LAND TENURES

AND THE
OCCUPATION OF ASSINIBOIA

BY
LORD SELKIRK'S SETTLERS,

WITH A
LIST OF GRANTEES
UNDER THE EARL AND THE COMPANY.

BY
185-
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BARRISTER-AT-LAW (OF THE CANADIAN BAR).

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PREFACE.

WHILE the bibliography of Manitoba is far more extensive than many imagine, yet in no work on that province can any information, other than the most meagre, be obtained in regard to the dealings of the Hudson's Bay Company, the former owners of the country, with its lands, the conditions under which the same were planted by various kinds of settlers, the forms of tenure under which they held, the particular lands which were allotted to them, or the names of the grantees of such allotments.

It was only when engaged as one of the counsel on a case,* instituted by the descendants of one of Lord Selkirk's settlers, to set aside a patent erroneously granted by the Canadian Government, that I fully appreciated the lack of such information, realized the practical as well as historical importance of the subject, and became aware of the very great misconception that existed in regard to the tenures of the Company and the titles of Lord Selkirk's settlers. From being interested in the subject as a purely legal one, I found my attention being engaged from an historical point of view, and, being asked by the Historical and Scientific Society of Manitoba to read a paper on some aspect of the Company's rule, the first chapter of this book was the result. Encouraged by the reception it met with then, and later, when

* *Templeton v. Stewart*, 3 Western Law Times Reports, 189. Reprinted in Appendix N.

it was reprinted in the *Western Law Times of Canada*, I pursued my investigations, aiming particularly to substantiate the conclusions drawn by the reproduction of such original documents as were, in my opinion, necessary to support them.

No one who has not searched * for comparatively old documents in a new country can appreciate the difficulties to be overcome; especially in the face of such a destruction of public records as has occurred at Red River, first, by the iniquitous act of the Governor of Assiniboia in 1822; second, by the burning of the house of the Roman Catholic Bishop of St. Boniface, with all its archives, in 1861; and, third, by the Half-Breeds during the occupation of Fort Garry by Louis Riel in the Red River Rebellion of 1869-70.

The history of the lands of a people is necessarily to a very great extent the history of the people itself, so, in dealing with the lands of Red River I have given, not only the various classes of settlers who came to Assiniboia, but, as far as possible, their names and the actual allotments they occupied. With this end in view was prepared, not a little laboriously, a complete index to all the grantees of lands at Red River from the earliest times to 1870, the year of the transfer of Rupert's Land to Canada. This index also gives the numbers of the lots they occupied, thus enabling the descendants of any settler to ascertain accurately the lands granted to him.

It has been my aim, in discussing the legal questions which frequently arise, to do so in a popular manner as far as possible, and the illustrations have been added as a further means by which to bring the work within the range of the general reader, as well as that of the historical and legal student.

In the Appendix will be found collected all the documents, many for the first time printed, which will be of practical

* *Vide* pp. 32, 68, 71.

assistance to any one who has to inquire into the question of lands at Red River, from the point of view of the lawyer, the claimant, or the genealogist.

No one is more aware than I that the field open to such a book as this is very limited; but when the country grows older, if the result of my efforts comes to be regarded as a conscientious contribution to the history of Manitoba, I shall be more than repaid, and shall regard my residence of over eleven years in that province as not in vain.

I am aware that I must have made some mistakes in the course of my work, and I shall esteem it a favour if any one will point them out, so that I may correct them, should the opportunity offer, in a subsequent edition.

In my researches much assistance was received from many persons mentioned in the text, but my thanks in particular are due to C. C. Chipman, Esq., Commissioner of the Hudson's Bay Company; to W. E. Macara, Esq., Barrister-at-law, Inspector of Land Titles Offices, Winnipeg; to R. A. Ruttan, Esq., of the Dominion Lands Commission, Winnipeg, and to James Taylor, Esq., of Prince Albert, N. W. T.

ARCHER MARTIN.

VICTORIA, B.C., CANADA,
May, 1898.

NOTE BY THE PUBLISHERS.



FROM a variety of unforeseen causes the publication of this book has been delayed beyond the time originally contemplated, therefore circumstances may have changed in a few particulars, and it must be taken as speaking of affairs at the time it was written and not the time of publication, though the interest of the work and the accuracy of the information given are in no way affected by the delay.

CONTENTS.

CHAPTER I.

OF THE GRANT OF ASSINIBOIA TO THE EARL OF SELKIRK BY THE HUDSON'S BAY COMPANY.

	PAGE
The lands of the Hudson's Bay Company, and the dealings of the Crown with	1
The charter of the Company compared with others	3
The grant to Lord Selkirk	5
Two meanings of "District of Assiniboia"	8
Sales to settlers	9
Free grants to the same	10
Extinguishment of Indian title	12
Lord Selkirk's executors and the Colony	14

CHAPTER II.

OF THE POSSESSION OF ASSINIBOIA BY THE HUDSON'S BAY COMPANY.

The taking over of the Colony by the Company	15
Evidence as to date of same	16
Surrender of Rupert's Land to Canada	19
"Terms and conditions" thereof	20

CHAPTER III.

OF THE ALLOTMENT OF LANDS BY LORD SELKIRK TO HIS SETTLERS AND THE ESTATES GRANTED THEM THEREIN.

Difficulties of investigation caused by destruction of documents ...	21
Lord Selkirk's intentions as regards allotment of land ...	22
Particular lots granted	23
Scotch settlers	24
The De Meuron and Watteville settlers	25
The Glengarry Fencibles	26

	PAGE
The French Canadian settlers	27
Settlers at Pembina	28
Swiss settlers	29
Employees of the Company as settlers	30
Prof. Hind of the Canadian Exploring Expedition ; his search for documents	32
The Colony Register ; system of recording grants	33
Form of Company's contract of service and remarks on	34
Lord Selkirk's grant to Roman Catholic Mission	36
Governors of Assiniboia as the agents of Lord Selkirk's executors	43
Sale of Fort Douglas to Robert Logan	45
The Statute of Frauds not in force in Rupert's Land	47
Land "Certificates" of Governor Simpson	48
Leaseholds in Assiniboia	51
Mr. Halkett's visit to Assiniboia	60
Terms under which lands were sold to settlers	60
Agreements made with settlers by Governor Bulger	61
Governor Bulger and the lands of the Roman Catholic Mission	62
Deductions as to nature of tenure	63

CHAPTER IV.

OF THE ESTATES GRANTED BY THE HUDSON'S BAY COMPANY IN ASSINIBOIA, AND THE RECOGNITION BY THE COMPANY AND CANADA OF THE CLAIMS OF LORD SELKIRK'S SETTLERS.

Nature of the estates granted by the Company	65
Evidence of Sir George Simpson and Mr. Isbister in that regard	65
Governor Caldwell's statement	66
Early land cases in the Courts of Assiniboia	66
Mr. McTavish on the custom of the Company	68
Mr. Brydges (Commissioner of the Company) on the same	69
Agreement produced by him	69
Chief Factor Finlayson's certificate	70
The Company's Lease for 1000 years, and form of	71
Strange anomalies in example given	72
The out-pensioners from Chelsea Hospital	75
Pensioners' allotments at Fort Garry, and nature of tenure	75
Recognition of Lord Selkirk's grants by Company	83
Canada's recognition of Company's grants	84
The Manitoba Act	84
Errors of Canada in granting patents	85
Present policy of Canada in regard to	88
Effect of patent on title	90
Hay privileges of settlers	90

CONTENTS.

ix

	PAGE
Action of Canada in regard to	91
Commission to inquire into, and report of	91
Settlers receive patents for hay lands, or scrip in commutation therefor	92
Deductions as to nature of Company's tenures	92

CHAPTER V.

OF THE INDIAN TITLE AND HALF-BREED CLAIMS.

Treaty with Lord Selkirk, and map of	94
United States' view of aboriginal rights	94
Canada's view of same	96
Privy Council's view	98
Half-Breeds, successors to Indians, and claims of, considered ...	99
"Original white" settlers	103
North-West early settlers	104
"Staked claims" on Rat, Seine, and La Salle Rivers ...	105
Note on early settlement at Rat River	105
Canada eventually recognizes "staked claims"	106

CHAPTER VI.

OF THE SURVEYS AND RECORDS OF ASSINIBOIA, AND THE METHOD OF TRANSFER OF LAND UNDER THE COMPANY.

Mr. Dennis' erroneous view in regard to early surveys	107
First survey made by Lord Selkirk	108
Fidler's survey, and note on him	108
Allotments for retired servants of the company	110
Correspondence in regard to	111
Kemp's survey	111
Removal of old plans to Ottawa	112
Taylor's survey	114
Early work of Colonel Dennis	115
Taylor's plans of survey	116
Records of Council of Assiniboia and General Quarterly Court ...	118
Hudson's Bay Register B	118, 123
Prior land registers	121
Register A, its various contents, and description of	125
Inquiry into missing registers of Lord Selkirk	128
Gross negligence of Hudson's Bay Company in regard to records	129
Method of transfer of land at Red River	130
Evidence of J. H. McTavish	131
Judgment of Mr. Justice Killam	132
Conclusion	133

LIST OF GRANTEES IN ASSINIBOIA	135
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APPENDICES.



A.—CHARTER OF THE HUDSON'S BAY COMPANY	163
B.—CONVEYANCE OF ASSINIBOIA TO LORD SELKIRK FROM THE COMPANY	173
C.—NOTES ON VALIDITY OF COMPANY'S CHARTER	...	...	183
D.—LIST OF RED RIVER SETTLERS, SCOTCH	...	...	184
E.—LIST OF SCOTCH SETTLERS WHO ABANDONED RED RIVER			187
F.—PETITION OF SELKIRK SETTLERS TO THE PRINCE REGENT	...		189
G.—LIST OF RED RIVER SETTLERS, SWISS	...	...	194
H.—TERMS OF LORD SELKIRK WITH SWISS SETTLERS	...	...	196
I.—WILL OF LORD SELKIRK	...	...	198
J.—GOVERNOR BULGER'S CORRESPONDENCE WITH THE BISHOP OF ST. BONIFACE	...	...	200
K.—LIST OF PENSIONERS WHO WENT TO FORT GARRY IN 1848 AND 1850	...	...	203
L.—"CONDITIONS ON WHICH IT IS PROPOSED TO ENROL PENSIONERS FOR SERVICE AT FORT GARRY IN THE TERRITORY OF THE HUDSON'S BAY COMPANY, NORTH AMERICA"	...	...	205
M.—"SCHEME SHOWING SUB-DIVISION OF LOT NO. 1211 (POINT- A-PELTIER) AMONGST FORT GARRY ENROLLED PENSIONERS, 9TH NOVEMBER, 1852"	...	...	208
N.—REPORT OF CASE OF <i>Templeton v. Stewart</i>	...	...	210
O.—HAY PRIVILEGES IN ASSINIBOIA	...	...	213
P.—LETTER OF ALEXANDER LEAN TO PETER FIDLER REGARDING THE AMALGAMATION OF THE HUDSON'S BAY AND NORTH-WEST COMPANIES	...	...	215
Q.—DEED OF SURRENDER OF RUPERT'S LAND BY THE HUDSON'S BAY COMPANY TO THE CROWN	...	...	216
INDEX	...	...	223

LIST OF ILLUSTRATIONS.



<p> PORTRAIT OF PRINCE RUPERT, FIRST GOVERNOR OF THE HUDSON'S BAY COMPANY, FROM THE ORIGINAL IN HUDSON'S BAY HOUSE, LONDON </p>	<i>Frontispiece</i>
1. MAP OF ASSINIBOIA, AS GRANTED TO LORD SELKIRK	<i>To face page 5</i>
2. MAP OF LANDS CONVEYED BY INDIAN CHIEFS AT RED RIVER 	,, ,, 94
3. AMOS' PLAN OF RED RIVER SETTLEMENT IN 1816. FROM "REPORTS OF TRIALS IN COURTS OF CANADA RELATIVE TO THE SETTLEMENT IN RED RIVER." BY ANDREW AMOS. PUBLISHED BY MR. JOHN MURRAY, WHO KINDLY GAVE PERMISSION FOR THE COPY TO BE TAKEN 	,, ,, 109
4. PLAN OF THE FORKS OF RED AND ASSINIBOINE RIVERS IN 1836 	,, ,, 116

CORRIGENDA.

Page 11, note (*n*), *add*, *History of Manitoba*, Donald Gunn, pp. 200-1.

Page 27, note (*ss*), for "9" read "13."

Page 52, line 21, *delete* "999 and."

THE HUDSON'S BAY COMPANY'S LAND TEN- URES, AND THE OCCUPATION OF ASSINIBOIA BY LORD SEL- KIRK'S SETTLERS.

CHAPTER I.

OF THE GRANT OF ASSINIBOIA TO THE EARL OF SELKIRK BY THE HUDSON'S BAY COMPANY.*

While the origin and commercial progress of the Hudson's Bay Company, the last of the old English chartered corporations, have received some attention from the pen of the historian, and while its struggles, prosperities and adversities have been more or less faithfully recorded, and the charm of romance thrown round its operations in the barter of its costly furs, yet its lands—the most enduring of all possessions—their actual occupation, method of allotment and form of tenure, have attracted but scant attention and present almost a new field, and not a lean one, to the inquirer into one of the most interesting phases of the history of Manitoba.

This subject differs from the purely historical in that it is a thoroughly practical one—a live issue of the day—and of considerable interest, pecuniary in some cases, to those who came to the District of Assiniboia under the auspices of Lord Selkirk or the Company. As an illustration of this assertion, if such were needed, it is only necessary to refer to the proceedings before our courts of law. Quite lately the question as to whether or not the law of primogeniture

*This chapter was read before the Historical and Scientific Society of Manitoba, at Winnipeg, on December 1st, 1892.

was in force in Manitoba prior to its Transfer to Canada in 1870, was before the judges of the Queen's Bench (a) and it was held that it was in force if such estates existed as it could operate on, *i. e.*, estates of freehold. If their existence can be proved, then many of the patents granted by the Dominion Government to the representatives of Red River settlers have been granted in error, and why might not such a mistake have occurred as regards lands of immense value situate in the heart of Winnipeg as well as the sorry claim of the meanest of Lord Selkirk's settlers?

That many such mistakes have been made by the Crown is an open secret among the legal profession, and that the officials of the Manitoba Land Titles Offices realize the importance of the question is evidenced by the fact that, going behind the Crown grant they procure from Ottawa the papers and documents on which the patent was granted, and, quite independent of the investigations of the Crown officers there, subject the evidences of title to the most rigorous scrutiny. Even now "uneasy lie the heads" of many landowners in one of the most valuable residence portions of Winnipeg, Fort Rouge, because of the outstanding interest of a poor half-breed girl who long ago went to the Saskatchewan but may unconsciously have left her children a rich inheritance.

In a former series of papers entitled "The Rise of Law in Rupert's Land" (b), the writer came to the conclusion that the courts of law in this province have practically found that the proprietary rights of the Company under its charter, May 2, 1670, were valid; the monopoly in trade possibly was not. For the reasons for entertaining this opinion reference must be made to the papers themselves, and it does not seem necessary to allude to them other than

(a) *Re Tail, Western Law Times of Canada*, Vol. I., pp. 76, 158 (Reports).

(b) *Ibid*, Vol. I., pp. 49, 73, 193. See appendix C.

that a careful consideration of the other charters (c) of the American plantations or colonies confirms the writer in the belief that they were not inconsistent with the age in which the grants were made, in fact were recognized as a prerogative of the Crown. And there is also this further circumstance of no little significance that while in many cases the grantees of the other American charters were people of small consequence and presumably little influence, in some cases apparently of none, not even a City knight among the proprietors, yet those of the Bay Company included personages of the very highest rank, a Prince of the Blood—from whom the plantation derived its name, Rupert's Land—at the head of them, and it is surely not unreasonable to assume that in such a case the sovereign meant to clothe such royal "adventurers" with the very greatest powers he could by exercise of his prerogative in that behalf.

These companies bore similiar names to the full name of the Hudson's Bay Company. For instance, that of Virginia, under its second charter, was styled the "Treasurer and Company of Adventurers and Planters for the City of London, for the first colony in Virginia"; that of Massachusetts Bay: "The Governor and Companie of the Massachusetts Bay in New England"; that of Connecticut: "The Governor and Company of the English Colony of Connecticut, in New England, in America"; another "The Governor and Company of the English Colony of Rhode Island and Providence Plantations, in New England, in America"; another "The Trustees for establishing the colony of Georgia in America"; and so forth. The Maryland Charter, 1632, of Charles I to Lord Baltimore, was most remarkable in its amplitude, going even to the extent of empowering the grantee to invest the inhabitants

(c) *Vide* Charters of the Old English Colonies in America. By Samuel Lucas, Esq., of the Inner Temple, Barrister-at-law, London, 1850.

“with what titles and dignities soever as he shall think fit (so they be not such as are now used in England),” and to a lesser degree was also that famous one granted to Sir William Penn by Charles II eleven years *after* that of the Bay Company. His sovereign appeared particularly desirous of doing honour to Lord Baltimore for we find this quaint expression : “Now, that the said country thus by “us granted and described *may be eminent above all other parts of the said territory, and dignified with large titles,* “know ye, that we, of our further grace, certain knowledge “and mere motion have thought fit to erect the same “country and islands into a *Province*; as out of the fullness “of our royal power and prerogative we do for us our “heirs and successors erect and incorporate them into a “province, and do call it Maryland, and so from henceforth “we will have it called.” Penn received a somewhat similar honour in the case of his grant, but not in such sounding terms, though he was empowered to erect manors and to hold Courts Baron in each and every of them so erected.

The Governor and Company of the Hudson's Bay Adventurers were “made created and constituted” . . “the true and absolute lords and proprietors of” Rupert's Land and held that plantation “as of our manor at East Greenwich, in our county of Kent, in free and common soccage, and not in capite or by Knights service, yeilding and paying yearly to us, our heirs and successors, for the same, two elks and two black beavers, whensoever and as often as we, our heirs and successors shall happen to enter into the said countries, territories and regions hereby granted.” The three Virginia charters were held of the same manor and by the same tenure, paying a fifth part of the gold and silver and, originally, one fifteenth of the copper; so were Massachusetts (1st and 2nd charters), Connecticut and Rhode Island, while those of Maryland and Pennsylvania



MAP OF THE DISTRICT OF ASSINIBOIA, 1871

Extracted from Register "A."

Memorandum.

Whereas the Surveys upon which this Map has been drawn are not sufficient to ascertain with precision whether Latitude 52° does intersect the River called Red or Assiniboine River, it is therefore hereby agreed by and between the within mentioned Governor and Thomas Earl of Selkirk that in case the Waters of Red River shall on more accurate Surveys be found not to extend so far North as Latitude 52° then the West boundary of the Fract of Land intended to be within granted shall be a Line drawn due North and South through the Fall upon the said River marked on this Plan Carlton House the words "Source of the said River being deleted before delivery hereof."

Witness

Alex. Mundell
Edw^d Roberts

Alex. Lean Sur^y

Selkirk

were held "as of our Castle of Windsor in our county of Berks," that of Maryland at "two Indian arrows of those parts" in addition to the fifth part of the gold and silver, and in Penn's charter two beaver skins took the place of the arrows, but, differing in this respect from our Company's charter, they were to be delivered at Windsor Castle before the first of January; Georgia's "Trustees" held their charter (1732) "as of our manor of Hampton Court in our county of Middlesex" likewise in free and common soccage at "the sum of four shillings for every hundred acres of the said lands which the said corporation shall grant, demise, plant or settle, the said payment not to commence or be made until ten years after such grant demise planting or settling."

The Company, then, being "the true and absolute Lords and Proprietors of Rupert's Land, in free and common soccage," on the 12th day of June, 1811, "granted, aliened, enfeoffed and confirmed" unto the Right Honourable Thomas Earl of Selkirk, his heirs and assigns forever, all that tract of land or territory, comprising about 116,000 square miles, bounded by an imaginary line running as follows, that is to say:

Beginning on the western shore of Lake Winnipie, otherwise Winnipeg, at a point in fifty-two degrees and thirty minutes north latitude, thence running due west to the Lake Winnepigoos, otherwise called Little Winnipeg, then in a southerly direction through the said Lake so as to strike its western shore in latitude fifty-two degrees north, then due west to the place where the parallel of fifty-two degrees north latitude intersects the western branch of Red River, otherwise called Assiniboine River, then due south from that point of intersection to the Height of Land which separates the waters running into Hudson's Bay from those of the Missouri and Mississippi, then in an easterly direction along the said Height of Land to the source of the River Winnipie or Winnipeg (meaning by such last mentioned River, the principal branch of the waters which unite in Lake Saginagas), then along the main stream of the waters and the middle of the several lakes through which they flow to the mouth of the Winnipeg River and thence in a northerly direction through the middle of Lake Winnipie to the place of beginning.

An important reservation in favour of the grantors was made in the following clause :

Saving and reserving nevertheless to the said Governor and Company and their successors all *rights of jurisdiction* whatsoever granted to said company by their charter.

This is why the governors of Assiniboia received their commissions from the Company and not from Lord Selkirk.

One tenth of the said tract was to be set out by the Earl, at the request of the Company "to the use of such person or persons, being or having been in the service or employ of the said Governor and Company for a term not less than three years immediately preceding the date and execution of any direction or appointment to be made by the said Governor and Company and their successors under this present power, in such parts, shares, and portions *and for such estates and interests* as the said Governor and Company . . . shall from time to time . . . direct or appoint. Nevertheless, so that no person taking under any such direction or appointment and being under the rank or degree of Master of a trading post, shall be or become entitled to any greater part share or proportion than two hundred acres, nor any person of the rank or degree of Master of a trading post any greater part, share or proportion than one thousand acres."

Then follow certain conditions to be performed on behalf of the Earl, in default of which, after due notice on the part of the Company and three years subsequent neglect to perform on the part of the grantee, it would be lawful for the Company to revoke the grant, but even in this case "subject and without prejudice to any such grant as shall have been previously made by the said Earl, his heirs or assigns to or in favour of any person or persons, so as upon the land comprised in any such grant there be actual settlers to the amount of one family for every five thousand acres."

It is not, however, necessary to further notice these conditions for there is no evidence whatever that the Company ever required the Earl to perform them, in fact from subsequent occurrences the presumption is the other way. Any one wishing to refer to the deed will find it printed in full in the 36th Transaction of this society (*d*). It is to be regretted that while Mr. James Taylor, who furnished the copy of the deed from which this Transaction was printed, took the late Governor Morris to task for suppressing parts of the above deed and a map in his "Treaties of the Indians," pp. 14, 300-1-2, yet he did not furnish to the Society, so far as appears from the Transaction, the source from which he derived the document which he stated was a copy of the original deed. The fact is the more unfortunate as it is most important that we should be certain that the document printed by the Society as being a copy of the deed is truly a copy. It may be fairly presumed that the original is at the Company's head office in London with the rest of the title deeds, as it was in all likelihood returned by Lord Selkirk's executors when the Company resumed possession of his estate at Red River.

In August, 1812, Miles McDonnell, formerly captain in His Majesty's Regiment of Royal Canadian Volunteers, who had in June, 1811, been appointed by the Company as Governor of the District of Assiniboia (*e*), the name bestowed on the territory, and by Lord Selkirk as his agent and superintendent, arrived at Red River and took possession of the lands in the name of his master (*f*). He, "on or about the 4th of September ensuing, caused the grant "of the Territory by the Hudson's Bay Company to the "Earl of Selkirk to be read, together with his own com-

(*d*) Historical and Scientific Society of Manitoba. The full text of this deed will be found in Appendix B.—Mr. Taylor subsequently explained to the writer that his copy was extracted from Colony Register A.

(*e*) Statement respecting E. of Selkirk's settlement, 1817, p. 3. Parliamentary Report, 1819, p. 145.

(*f*) Parliamentary Report, 1819, p. 154.

"mission as Governor, at a public meeting called by him "for that purpose," at which time and place also, and as Lord Selkirk's attorney as provided in the deed, receiving at the hands of William Hillier, acting on behalf of the Company, formal and peaceable possession of the before mentioned lands. These ceremonies were followed up by a salute from the guns of the neighbouring Fort Douglas.

As the term "District of Assiniboia" is apt to be misunderstood, it may be as well to distinguish between its two widely dissimilar meanings. The matter is thus explained by the first Recorder of Rupert's Land, Mr. Thom (g) : "Assiniboia is the common name of two very different districts, the judicial and the municipal. In the Honourable Company's resolutions of 1839, for the appointment of a governor, a council, and two sheriffs, the judicial district is described to be such portion of Lord Selkirk's original grant as may be within Her Majesty's dominions; whereas in the local regulations of 1841, the municipal district is limited to a circle of a hundred miles in diameter, with the Forks as a centre. * * * Of the judicial district thus defined, the municipal district forms hardly an eighth part and it would have been manifestly absurd and preposterous to extend our local regulations over so wide and wild a surface."

While all the allotments of Lord Selkirk or his executors were comprised within the municipal district, yet possibly some of the later grants of the Company were outside of it. It will be observed that a portion of the Earl's domain lay within the territory of the United States, and his grant was inoperative to that extent. The error arose from ignorance as to the international boundary, the exact location of which was not established till many years after, when Fort Daer (Pembina), which was found to be beyond it, had to be abandoned.

(g) Charge to the Grand Jury of Assiniboia : 20 Feb. 1845 ; London, 1848.

It is only reasonable to assume that Governor McDonnell at once allotted to the settlers who accompanied him their respective lands and pursued the same course towards those who came later ; in fact, he states that "the emigrants that arrived last from Sutherlandshire, after seeing the country and *being put in possession* of their different allotments of land, were so pleased with the flattering prospect before them that they wrote home to their friends," etc. (h) It also appears that in the summer of 1813 or 1814, "the surveyor of the colony, in laying out some lots for settlers, insisted upon running one of his lines through the middle of the garden of the North-West Company's post, which after some opposition was submitted to." (i)

In his prospectus (j) of the colony, Lord Selkirk had announced that to the "settlers lands will be disposed of, either in the *way of sale* or lease in perpetuity, at the option of the settler, on terms very encouraging to him," etc. The settler was to be provided with a free passage for himself and family, at an estimated cost of £10, and the price of the land was "to be 10s. per acre, if sold, or if leased in perpetuity, 1s. per annum ; every family of settlers may be expected to take up at least 100 acres. They are allowed some accomodation of time for the payment, and 100 acres at the above rate will amount to £50, a nett advantage of £40 after reimbursing the charge of bringing in the settlers. If he should prefer leasing, his rent will in two years repay the charges and will remain afterwards as a clear income to the Proprietor."

The settlers, however, encountered considerable opposition at the hands of the North-West Company of Montreal and differences arose between Governor McDonnell and the representative of that company, which resulted in the serving by McDonnell of the following notice :

(h) Report 1819, p. 28.

(i) Ibid, p. 159.

(j) Narrative of Occurrences, App. p. 5. London, 1817.

DISTRICT OF } To Mr. Duncan Cameron, acting for the North-West
 ASSINIBOIA. } Company at the Forks of the Red River:

Take notice, That by the authority and on the behalf of *your landlord*, the Right Honourable Thomas Earl of Selkirk, I do hereby warn you, and your associates of the North-West Company, to quit the post and premises you now occupy at the Forks of the Red River, within six calendar months from the date hereof.

Given under my hand at Red River Settlement this 21st day of October, 1814.

(Sgd) MILES McDONNELL. (*k*)

The North-West Company refused to recognize this claim to the soil and the differences between the companies soon terminated in open violence, resulting eventually in the deplorable massacre of Seven Oaks on June 19th, 1816. During these conflicts the settlers were frequently disturbed in the possession of their allotments and it was not till the summer of 1817, after the proclamation of the Prince Regent, (*l*) commanding the contending parties to abstain from all further acts of hostility and restore mutually the places and property captured from each other during their recent disputes and remove all blockade or other obstruction interposed by them to the freedom of trade and intercourse with the Indians, and after the arrival of Commissioner Coltman and Lord Selkirk that they were left in undisturbed occupancy of their river farms.

Lord Selkirk, during his stay at Red River, took steps to settle the colonists on their lands in a permanent manner. Mr. Ross (*m*) relates the way in which this was done.

“His Lordship assembled the emigrants at a public meeting on the west bank of Red River some two miles below Fort Garry, and in consideration of the hardships, losses, and misfortunes they had from time to time suffered, he made them several concessions. To some, who had lost their all, he made a grant of land, comprising twenty-four ten chain lots, in free soccage, the holders merely conform-

(*k*) Report 1819-10.

(*l*) Trials-Report of, at York, 1819, Appendix 2. Rep. 1819, p. 94.

(*m*) Red River, p. 42.

ing to the conditions laid down in the deed of feoffment granted by the Hudson's Bay Company to the Earl. These lots were the only *free* lands granted to *emigrants* in the colony. They had lately been surveyed and marked off by Mr. (Peter) Fidler, on the left bank of the river, and two of them (Nos. 3 and 4) were designated by his Lordship as the sites respectively of a church and school for the colony. 'Here,' said his Lordship,—pointing to the lot No. 4, on which the company stood—'here, you shall build your church, (n) and that lot,' said he again, pointing to the next, being No. 3, 'is for a school.' Between the church and school lots there runs a small rivulet, called the Parsonage Creek." (o)

Ross also states (p) :

The lots alluded to, as the document (q) informs us, and which we shall transcribe for future reference, "are laid out along a line run by Mr. Fidler in the direction North 12° East, or thereby; lot No. 1 commencing at the distance of one mile, or thereby, from Fort Douglas," which fort was, at that time, situate on the south side or head of the point; "and lot No. 24 ending at Frog Plain. Each lot has a front of 10 chains, or 220 yards, a little more or less, along the said main line, except lot No. 12, which has only 5 chains. The division lines between the lots are at right angles to the main line, and are marked off towards the river by lines of stakes. Each lot is to extend to the distance of 90 chains, or 1,980 yards back from the river, so as to contain 90 English statute acres, besides which, each lot is to have a separate piece of woodland, containing 10 statute acres, to be laid off on the east side of the river, at any place which the Earl of Selkirk or his agent shall consider as most suitable for the purpose. These 10 acres are to be preserved by the occupier as wood-land, and not to be used for any other purpose. Till this wood-land be measured and marked off, the occupiers of the aforesaid lots will be allowed to take wood for building or fire-wood

(n) Where St. John's Cathedral now is.

(o) This creek crosses the main highway a little south of the new St. John's College, and falls between high banks into the Red River.

(p) Pp. 43-4.

(q) It is not stated what the "document" was, but it may be gathered from the following extract that it was a sort of formal declaration on the part of the Earl as to what his intentions were in regard to the lands of the settlers in general, and a recognition of the special claims of some of them.

from any place most at hand on the opposite side of the river. In case of the lands on the opposite side of the river being laid out in lots for settlement, the settlers in possession of the aforesaid 24 lots, shall have the first offer of purchasing the lots opposite to their own, and they shall not be disposed of at a cheaper rate to any stranger.

In consideration of the hardships which the settlers have suffered, in consequence of the lawless conduct of the North-West Company, Lord Selkirk intends to grant the aforesaid 24 lots gratuitously, to those of the settlers who had made improvements on their lands, before they were driven away from them last year ; provided always, that as soon as they have the means, they shall pay the debts which they owe to the Earl of Selkirk, or to the Hudson's Bay Company, for goods or provisions supplied to them, or for other expenses incurred on their account.

(Signed)

SELKIRK.

Fort Douglas, Red River Settlement,

August, 1817."

About the same time Lord Selkirk concluded a treaty with the Indians by which their title to that part of the land occupied by the colonists was extinguished. Ross (r) gives the full text of the treaty as follows :

This Indenture, made on the 18th day of July, in the fifty-seventh year of the reign of our Sovereign Lord, King George the Third, and in the year of our Lord 1817, between the undersigned Chiefs and Warriors of the Chippeway or Saulteaux Nation, and of the Killistino or Cree Nation, on the one part, and the Right Honourable Thomas Earl of Selkirk on the other part. WITNESSETH, that for and in consideration of the annual present or quit-rent hereinafter mentioned, the said Chiefs have given, granted, and confirmed, and do by these presents give, grant and confirm unto our Sovereign Lord the King, all that tract of land adjacent to Red River and Assiniboine River, beginning at the mouth of the Red River, and extending along the same as far as the Grand Forks at the mouth of Red Lake River, and along Assiniboine River as far as Musk-rat River, otherwise called Riviere des Champignons, and extending to the distance of six miles from Fort Douglas (the first colony fort) on every side, and likewise from Fort Daer (at Pembina), and also from the Great Forks, and in other parts extending in breadth to the distance of two English statute miles back from the banks of the said rivers, on each side, together with all the appurtenances whatsoever of the said tract of land, to have and to hold for ever the said tract of land, and appurtenances, to the use of the said Earl of Selkirk, and of the settlers being established thereon with the consent and permission of our Sovereign Lord the King, or of the said Earl of Selkirk. Provided always, and

these presents are under the express condition, that the said Earl, his heirs, and successors, or their agents, shall annually pay to the Chiefs and Warriors of the Chippeway or Saulteaux Nation the present, or quit-rent, consisting of one hundred pounds weight of good merchantable tobacco, to be delivered on or before the tenth day of October at the Forks of Assiniboine River: and to the Chiefs and Warriors of the Knistineaux or Cree Nation a like present, or quit-rent, of one hundred pounds of tobacco, to be delivered to them on or before the said tenth day of October, at Portage de la Prairie, on the banks of Assiniboine River. Provided always that the traders hitherto established upon any part of the above-mentioned tract of land, shall not be molested in the possession of the lands which they have already cultivated and improved, till his Majesty's pleasure shall be known.

"In witness whereof, the Chiefs aforesaid have set their marks at the Forks of Red River, on the day aforesaid.

(Signed) "SELKIRK."

Signed in the presence of Thomas Thomas; James Bird; F. Matthey, Captain; P. D'Orsonnens, Captain; Miles Macdonnell; J. Bste. Chr. de Lorimier; Louis Nolin, Interpreter; and the following chiefs, each of whom made his mark, being a rude outline of some animal.

MOCHEWHEOCAB
(Le Sonnant).
MECHUDEWIKONAIE
(La Robe Noire).
PEGOWIS.

OUCKIDOAT
(Premier, alias Grandes Oreilles).
KAYAJIEKEBIENOA
(L'homme Noir).

It is alleged that the meaning of the distance of two statute miles mentioned in the indenture was conveyed to the Indians by stating that they granted to the "Silver Chief"—Lord Selkirk—so much land back from the river as there would be at the farthest distance therefrom at which you could distinctly see a horse on the level prairie, or daylight under his belly between his legs. It is open to doubt whether the treaty so concluded was not incorrectly concluded by admitting the claim of the Saulteaux or Chippeway to an interest in the soil, whereas the Crees and Assiniboines (an offshoot of the Sioux) were the owners of the country so far as such wild people can be deemed owners, and the Saulteaux had not entered into the Red River country before 1780, when they were introduced thereto in the service of the North-West Company. (s)

But it is not necessary to further consider this question of the Indian title—a right apt to be considered by civilized intruders on barbarous and ill defined territories as not a legal but a moral one barely entitling the inhabitants to some scant and tardy measure of consideration—as the claims of the Indians and half-breeds were ultimately investigated and allowed for by the Dominion Government on the transfer of Rupert's Land as will be hereafter mentioned.

Having seen, then, the settlers established in Assiniboia and holding under titles granted by the Earl of Selkirk, the grantee of the Company, and passing over for the present the investigation of the nature of such titles, it is necessary to determine for what period of time the Earl or his agents continued to grant lands to the settlers.

Under these grants, whatever they were, these settlers from the beginning took and (save interruptions before referred to) continued in possession of their farms. After the death of Lord Selkirk in 1820, and until 1824, his executors continued to deal with the colony as he or his agents had done before, but since the latter date its affairs had been entrusted to the Company's officers by the executors.^(t) The settlement had cost the deceased nobleman, or his estate, a very large amount of money "from first to last" says Ross "no less a sum than 85,000*l.* sterling; an amount the colony would not have realized had it been sold off at auction, even twenty years after it was founded." ^(u)

(t) Ross, p.155. (u) Ross, p. 171.

CHAPTER II.

OF THE POSSESSION OF ASSINIBOIA BY THE HUDSON'S BAY
COMPANY.

The result of the Earl's scheme of settlement having proved so disastrous, negotiations were accordingly set on foot for a transfer of the colony to the Company. This was eventually effected, and the Company purchased from the executors in the year 1835 or 1836 all the interest of the Selkirk estate in the same and became the sole owners of the District of Assiniboia, thus revesting in themselves their old title thereto. It is only natural to assume that a transaction of such magnitude would be evidenced by indentures of some description but recent enquiry from Mr. Armit, the secretary of the Company in London, elicited the strange fact that the directors were unaware of any conveyance or relinquishment whatsoever from or by the executors to the Company, nor could he furnish the date on which the Company resumed possession of the colony, if indeed any formal resumption took place or were necessary under the exceptional circumstances of the District being under its control at the time. *

It is unfortunate that this very important date of the re-possession of Assiniboia cannot be accurately determined in the absence of original documentary evidence, for that which is available is conflicting. Ross (*v*) says :

For the first ten or twelve years, it (the colony) was under the management of Lord Selkirk's authority, as lord paramount ; and after that in consequence of his death, it fell into the hands of his Lordship's executors, who found it convenient to transfer the government of its affairs into the hands of the Company, as noticed in the last chapter.

(*v*) *Ibid*, p. 170.

This arrangement lasted about twelve years more, till the present time (1835), when we have to regard it as the property of the Hudson's Bay Company by right of purchase.

And further (*w*) :

Nor was it till many years after the settlement became virtually the Company's own property, that the fact was made known to the people, and then by mere chance. Till this eventuality the people were under the persuasion that the colony still belonged to the executors of Lord Selkirk, and were often given to understand so.

But Hargrave (*x*) assigns the date a year later :

In 1836 the Hudson's Bay Company repurchased from the heirs of Lord Selkirk the whole tract of country ceded to his Lordship in 1811. This step was taken as the best means of putting an end to the complications arising from the tenure of the country by Lord Selkirk's representatives. The sum paid by the Company was about £84,000, and was meant to reimburse Lord Selkirk's heirs for the large sums his Lordship had spent in improving and settling the colony. This transaction was without prejudice to the interests of all colonists who had purchased land between 1811 and 1836.

The Rt. Hon. Edward Ellice, M.P., a man all powerful in the councils of the North-West and Hudson's Bay Companies and "perfectly acquainted with the constitution of both," in his evidence before the House of Commons Committee in 1857, speaking of the purchase from Lord Selkirk, said : (*y*)

The Hudson's Bay Company have a large mass of property (Red River Settlement) which they repurchased from Lord Selkirk in 1836 for a considerable sum of money. They thought it better to extinguish Lord Selkirk's right, and not to have separate interests in the country.

And again :

Q. 5985. In the same statement which has been laid before this Committee, I observe an item of 84,111*l.* paid to Lord Selkirk for the Red River settlement ?

A. That is the money actually paid to Lord Selkirk, with interest added to it. The honourable gentleman is aware that when merchants make a purchase they open an account, and they debit to that account the money which the estate cost them, and they add the interest, and deduct any revenue or receipt which they have had from it since ; and the 84,000*l.* is the balance of such an account.

(*w*) *Ibid.*, p. 173. (*x*) *Red River*, p. 80. (*y*) Report from Select Committee on the H. B. Co., 1857. §§ 5839, 5931.

Q. In 1836, as you have already stated to the Committee ?

A. Yes.

Q. *Chairman*—Rt. Hon. Henry Labouchere.] Deducting your profits ?

A. Yes. I am afraid there are no profits ; it is the accumulation of interest.

Before the same committee, Sir George Simpson, who had at that time been for 37 years the Governor over the whole of the Company's territories and affairs in North America, gave still another date as that of the repurchase :

Q. 1776. Previously to 1834 the Red River Settlement belonged to Lord Selkirk, did it not ?

A. Yes.

Q. It had been sold a long time previously by the Hudson's Company to his Lordship for the purposes of colonization ?

A. Yes.

Q. He re-transferred it to the Company in 1834 ?

A. Yes.

Q. And you paid his Lordship for that acquisition ?

A. Yes.

Sir Edmund Head, Bart., Governor of the Company, writing (z) on November 11, 1863, in reply to the Duke of Newcastle's suggestion as to the introduction of the direct authority of the British Government in Rupert's Land, said:

In 1834 the Hudson's Bay Company repurchased this district (Assiniboia) from Lord Selkirk for a consideration estimated at upwards of £80,000.

But that 1836 was considered by the Canadian Government in 1873 as being the correct date may be inferred from the Act, 36 Vic. cap. 37. This made provision for the Lieutenant-Governor of Manitoba setting aside lots or tracts of land in that province, not exceeding in the whole forty-nine thousand acres, for the purpose of making free grants thereof to such persons then resident in the province as were original white settlers who came into the Red River country under the auspices of Lord Selkirk between the years one thousand eight hundred and thirteen and thirty-five, both inclusive, or children of such original settlers not being half-breeds.

(z) Hudson's Bay Co., Correspondence etc., London, 1869, p. 26.

Even were Sir George Simpson's statements before the Select Committee generally entitled to weight, and it is well known that they were not, in a matter of dates such as this his memory would be very apt to be defective and not at all as liable to be correct as the deliberate assertion of Hargrave, who for many years held a very responsible position in the Company's service at Fort Garry, where he had, as he tells us truly in his preface, "constant recourse to documents connected with the government," and "carefully consulted authorities on every point in which doubt rested on [his] mind." Ross gives no reason for fixing the date at 1835, and his manner of stating the fact is rather loose, and the same remark applies to Sir Edmund Head's letter.

In favour of 1836 we have Mr. Ellice's positive statement, and he was in the best position to know the truth, Hargrave's corroborative testimony, and lastly the provision of the Act of Parliament formally recognizing the rights of the Earl's settlers up to 1836, being between 1813 and 1835 *inclusive*, and this exactly corresponds with that provision of the Earl's will which directed his executors immediately after his death (1820) to enter into possession of his lands but not to hold them for a period exceeding fifteen years. The effect of all the above evidence may be fairly taken to be that, though there is ample proof of the very day on which the Earl took possession (*a*) of

(*a*) *Ante*, p. 7 ; and also the following certificate of Peaceable Possession given by the H. B. Co.'s officers at the Forks :—

Be it remembered that on the fourth day of September, in the year one thousand eight hundred and twelve, at the Fork of Red River peaceable and quiet possession of the land and hereditaments by the within Indenture (*ante*, p. 7) granted and enfeoffed or otherwise assured or expressed and intended so to be was taken had and delivered by the within named William Hillier, one of the attornies for that purpose appointed, unto the within named Miles Macdonnell, Esquire, who was duly authorized to receive the same to and for the use of the within named Earl of Selkirk, his heirs and assigns according to the form and effect of the within written Indenture, in the presence of

(Sd.) JNO. MCLEOD,

(Sd.) RODK. MCKENZIE. —*Mss.*

Assiniboia, yet the date of the relinquishment of the same by his executors to the Company is uncertain and only probable, though in default of any better evidence the year 1836 must hereafter in these pages be taken as the correct one.

The Company after having got sole control of Assiniboia granted a large number of lots and parcels of land to their own servants and to strangers, the nature of which grants and the legal effect thereof will be inquired into in a following chapter.

The negotiations by the Canadian Government for the acquisition of Rupert's Land and the Indian (North-Western) Territories and the extinguishment of the rights of the Company therein culminated in the surrender by the Company to Her Majesty on the 19th November, 1869, but subject to certain terms and conditions, of all its "rights of government, and other rights, privileges, liberties, franchises, powers and authorities granted or purported to be granted to" it by its charter "and also all similar rights which may have been exercised or assumed by the said Company in any parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia, and all the lands and territories (except and subject as in said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent."

This deed of surrender (*b*) was duly accepted by Her Majesty on the 23rd June, 1870, and by order-in-council of the following day it was declared that from and after the fifteenth day of July, 1870, Rupert's Land and the North-Western Territories should, upon certain terms and conditions, be admitted into and become part of the Dominion of Canada. The terms and conditions numbered fifteen (*c*),

(*b*) Copy in Statutes of Canada for 1872, p. lxxvii.

(*c*) *Ibid*, p. lxy.

but the only ones which concern the subject under discussion are the following :

10. All titles to land up to the eighth day of March, 1869, conferred by the Company, are to be confirmed.

11. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government ; and the Company shall be relieved of all responsibility in respect of them.

In the same order-in-council and deed provision was made for the retention by the Company of their posts and adjoining blocks of land, and the one-twentieth part of the Fertile Belt.

CHAPTER III.

OF THE ALLOTMENT OF LANDS BY LORD SELKIRK TO HIS
SETTLERS AND THE ESTATES GRANTED THEM THEREIN.

In the first chapter the establishment of the earlier settlers upon their lands has been referred to, but only incidentally. In order, therefore, to more fully comprehend the nature of the titles granted to the colonists it will be advisable in the present one to consider briefly the circumstances under which the several classes of settlers were brought to Assiniboia, the promises made to them by Lord Selkirk relating to their lands, and their numbers and location in the settlement, so far as these facts may, at this distance of time, be ascertained.

At the outset difficulties of no ordinary character have to be encountered in the satisfactory solution of these matters and the cause of these difficulties is found in the fact that the public documents of the settlement were destroyed in a most iniquitous manner in 1822 by Alexander McDonell, the then Governor of Assiniboia. "This worthy," says Ross(*d*), "took ample revenge on the Scotch settlers by destroying or carrying off all the papers, whether public or private, that had been intrusted to him. Among the documents thus lost to the colonists for ever were all the papers containing promises made to them, at different times, by Lord Selkirk, in consideration of their hardships, and other public documents of value."

It is not therefore strange that many members of the legal profession of Manitoba, coming, as the great majority

(*d*) P. 69.

of them do, from other provinces of Canada, and finding that nearly every title which they are called upon to investigate is grounded on a recent grant from the Dominion Government, should ignore the real root of the same and hastily assume that it was derived from the Crown direct, or at the most, from the Hudson's Bay Company under the Manitoba Act. In one sense such a view would be correct, as Lord Selkirk himself derived from the Company and therefore all the titles in the country are the Company's titles, but the distinction lies in this, that different titles might be and were granted under each of the *régimes* of the Earl and the Company.

Fortified by some of the evidence given by certain witnesses before the British Parliamentary Committee in 1857, and, regrettably, by some loose and ill considered *obiter dicta* of certain of the Manitoba bench, the idea became prevalent that the titles derived from the Company were invariably leaseholds, with perhaps one exception, and the fact was not considered that, even if such a supposition were correct, there might have been other grants of a very different nature.

That Lord Selkirk himself proposed to grant estates of freehold to his settlers is plainly shown by his prospectus, wherein, it will be remembered, he announced that "settlers' lands will be disposed of, either by way of *sale* or "lease in perpetuity," the price "to be 10*s.* per acre if *sold*, "or if leased in perpetuity 1*s.* per annum ; every family of "settlers may be expected to take up at least 100 acres. ". . . If (they) should *prefer leasing* the rent will in "two years repay the charges and will remain afterwards "as a clear income to the proprietor," and the Earl was particular to point out to the people of means whom he endeavoured to enlist in his scheme, that "the difference "between buying land at 1*d.* or 2*d.* per acre and *selling* at "8*s.* or 10*s.* is very palpable and does not seem to require

“much comment.” It is most unreasonable to suppose that any settler would “prefer” a leasehold to a freehold, especially in a new country, and where, as in this instance, their lands might be paid for in produce(*e*). Ross and Gunn both concur in stating that each settler was to have 100 acres of land assigned to him as contemplated by the prospectus, but the price charged per acre was subsequently fixed at five, instead of ten shillings. Following out this intention of granting freeholds Ross (*f*) records the formal gift, at a public meeting, by the Earl, of twenty-four ten chain lots, except No. 12 which had only 5 chains, in *free soccage*, and gratuitously, on the left bank of the Red River, according to Peter Fidler’s survey, to certain of the settlers who had made improvements on their lands before being driven away by the Nor’-Westers, as a recompense for the hardships they had undergone.

These twenty-four lots are numbered and shown plainly on plan No. 3 appended to the Parliamentary Return of 1819. Mr. Amos also accompanies his “Report of Trials, etc.,” with even a better plan of the settlement as it was in June, 1816. By referring to a prior page (*g*) it will be seen that Mr. Fidler made his survey in 1813 or 1814. The names of the occupants might not be very hard to ascertain as, for example, we learn by the Return last mentioned, at pages 185-7, that “Alexander McBeath, an old soldier, formerly of the 73rd regiment,” occupied lot No. 3, Alexander Sutherland No. 12, the father of Alexander and William Bannerman No. 21, and Alexander Murray No. 23. Gunn (*h*) goes farther than Ross and says that “*each head of a family* was put in possession of one hundred acres of land . . . free of all charges.”

(*e*) Gunn, *History of Manitoba*, Ottawa, 1880, p. 200; Ross, 30.

(*f*) *Ante* pp. 10-12; Gunn, 200.

(*g*) P. 9.

(*h*) P. 201.

Mr. Halkett (*i*), one of Lord Selkirk's executors and subsequently their agent at Red River, states(*j*) that "the heads of families as they arrived were put in possession of regular lots of land which they immediately began to cultivate," but he does not mention the size of the lots given them.

George Campbell, one of the settlers who arrived at Churchill in the autumn of 1813 and proceeded to Red River in the spring of 1814, says that on the colonists' arrival at Red River one hundred acres of land were "given to each settler, and that he and five or six other settlers were furnished with horses(*k*)."
The Hon. Wm. McGillivray says (*l*) that Lord Selkirk received money in Scotland from intending settlers "to account for it in land at the rate of 5s. per acre."

(*i*) John Halkett, a younger son of Sir John Halkett, Bart., married, in 1815, Lady Katherine Douglas, a sister of the Earl of Selkirk.

(*j*) Statement, etc., *supra*, p. 4.

It might be well to keep in mind the numbers of the settlers. Halkett says, p. 3, "At the beginning of the year the settlement consisted of about one hundred persons (some Irish but mainly Highland Scotch.) In June, 1814, they received an addition of fifty more, and in September following the total number of settlers and labourers amounted to about two hundred. In the course of the same year between eighty and ninety additional emigrants" arrived at Hudson's Bay, but these latter and others and some colony servants, in all about 160 persons, did not reach Red River under the protection of Governor Robert Semple till November, 1815, after the first destruction of the colony by the Nor'-Westers in that year, who had then also seduced away about 140 of the settlers to Canada. (Report 1819, pp. 22, 24, 25.) The colonists who, refusing to go to Canada, had been driven off to Jack River (Norway House) in 1815, returned to Red River on August 19 of that year under protection of Mr. Colin Robertson of the H. B. Co., who had with him about 20 clerks and servants. (Report 174.) When the Earl of Selkirk arrived at Red River in June, the year after the destruction of Governor Semple and some 20 of his men, on June 19, 1816, there were left about 200 settlers, as near as may be estimated. For a list of the settlers who went to Canada see appendix.

(*k*) Narrative, etc., *supra*, appendix p. 24.

(*l*) *Ibid*, p. 16.

Hargrave states (*m*) that "the representatives of Lord Selkirk *sold* the land . . . at a nominal price varying "from 5s. to 7s. 6d. per acre."

Up till 1817, in speaking of settlers or colonists reference has been made to those from Scotland and Ireland, but with the arrival of Lord Selkirk at Red River in the summer of 1817, a new element was introduced. When he was in Montreal, in May, 1816, orders arrived for the reduction of the De Meuron(*n*), Watteville, and Glengarry Fencibles regiments, amongst others, consequent upon the peace with the United States. The De Meuron regiment included many soldiers from the "Germans and Piedmontese whom the conscription had forced to enter Buonaparte's armies." These joined the regiment when it was stationed at Gibraltar in 1809; it was afterwards stationed at Malta where it remained till 1813, from there going to North America where it was disbanded as above mentioned. As Mr. G. A. Fauche, a lieutenant of the De Meuron regiment testifies, Lord Selkirk "wished to obtain a number of efficient settlers for his colony at the Red River (and) agreed "with several of the officers and privates to accompany him "for the purpose of settling there. His Lordship was very "particular in his choice of the men, as none but those of "the best character, and who knew some of the requisite "and useful trades for the settlement would be accepted. "Engagements accordingly were entered into between "them and the Earl of Selkirk, who agreed to *give* the "officers and men a portion of land. In addition to this "the men were to receive agricultural implements, and to "be paid at the rate of eight dollars per month for working the boats to their destination. His Lordship further "agreed that if the men on their arrival at the settlement "should not wish to remain there, they should be sent

(*m*) P. 80.

(*n*) Called after Lt. Col. the Count de Meuron, a French Swiss, of Neuchatel: a large proportion of the regiment was Swiss.

“ back at his Lordship’s expense to Montreal, or to Europe
 “ by the ships from Hudson’s Bay. On the 4th of June,
 “ 1816, three officers(*o*), myself being the fourth, and
 “ about eighty men, left Montreal and proceeded to King-
 “ ston, in Upper Canada. The Watteville Regiment had
 “ been stationed at the latter place, and was also under
 “ orders to be disbanded. Twenty of that corps were en-
 “ gaged by Captain Matthey in the name of the Earl of
 “ Selkirk, upon the same conditions with those of the
 “ Regiment De Meuron”(p).

Mr. Halkett states (*q*) that a “few of the Glengarry Fencibles, with one of their officers, also joined” Lord Selkirk, and that he “entered into regular written agreements with each” of these disbanded soldiers to the effect stated by Lieut. Fauche. When this party eventually arrived at Red River, after the Earl’s reprisals at Fort William and elsewhere inflicted on the North-West Company, they were partly located on Point Douglas, now in the City of Winnipeg, which for that purpose was “surveyed (*r*) into a
 “ number of lots, each containing a few acres and border-
 “ ing on the river, a wide street running from the open to
 “ the highway being set apart for their common use,
 “ affording access to the common which lay beyond the
 “ road, on which the settlers on the point had a right of
 “ pasturage and of hay making. After Point Douglas had
 “ been appropriated a number of his Lordship’s troops
 “ (*sic*) were still without land. These had to take land
 “ on the east side of the Red River opposite to Point
 “ Douglas. All were paid and rationed for a time by his

(*o*) Captains Frederick Matthey and P. D’Orsonnens; Lieuts. Fauche and de Graffenreid.

(*p*) Statement, *supra*, p. 60, and Lt. Fauche’s account, appendix [k.k.], where letters of recommendation in favour of the regiment are quoted.

(*q*) Statement, *supra*, p. 60; Gunn, 167; Ross, 41.

(*r*) Gunn, 199-200; *vide* plan with Amos’ Trials.

“ Lordship. The non-commissioned officers were settled
 “ on land among the soldiers ; the superior officers lived at
 “ headquarters (Fort Douglas) and became members of the
 “ Colonial (*sic*) Council.” Ross (*s*) writing to a similiar
 effect says, “ they were rewarded with small grants of land
 “ situate on a tributary stream, known as Rivière la Seine,
 “ entering on the east side of Red River, opposite to Point
 “ Douglas, which afterwards, in honour of them took the
 “ name of German Creek.” This small river has since re-
 verted to its original name and is now known as the Seine.

In the following year on the 16th July, 1818(*ss*), a third class of settlers was introduced, that of the French Canadian from Lower Canada. Several families arrived under the charge of the Rev. Joseph Norbert Provencher, a most estimable Roman Catholic priest, subsequently the first bishop of St. Boniface, who was accompanied by Father Sévère Dumoulin. These few families of Canadian settlers must not be confounded with the relatively large Roman Catholic, and other more or less nomadic half-breeds who had been sparsely scattered throughout the North-West for at least a generation before, wherever in short the fur traders took to themselves Indian women, that is, everywhere.

The Rev. Geo. Bryce, LL.D., states(*t*) that these priests took up their abode with the De Meurons as they “ were mostly Roman Catholics.” But the De Meurons were not, generally speaking, Roman Catholics but Protestants(*tt*), and both Ross and Gunn agree that the Canadians went to

(*s*) Ross, 41. See two of these grants, those of F. D. Heurter and J. B. Lagimoniere, referred to in the Earls conveyance of 1818 to the Roman Catholic Misson, *post* p. 36.

(*ss*) Ross, 48; *The French Element in the North-West*, p. 9, by Father Lewis Drummond, S. J., Winnipeg, 1887.

(*t*) *The Old Settlers of Red River*, p. 3, Winnipeg, 1885, a pamphlet.

(*tt*) Ross, 57; Gunn, 218; Rev. John West's *Journal at Red River*, p. 60, London, 1824.

Pembina, then deemed to be British territory, in the autumn after they arrived, and were there settled, or a great part of them, for upwards of four years(*u*). The latter authority states that "the French families took land at Pembina "where they intended to go into farming operations. Here "a number of their countrymen, with their half-breed "families, built their huts or pitched their wigwams, "forming a village of considerable size, with its two "priests and chapel, having, at least outwardly, the appearance of civilization and comfort." Ross says also (*v*) that the Canadians were joined at Pembina "by half-breeds, "hunters and others with the addition of whose numbers "they formed a snug little settlement, so that a Catholic "church was built and houses erected." In 1822 doubts arose as to the exact whereabouts of the international boundary and at the suggestion of Mr. Halkett, the Earl's agent, for this and other reasons, Governor Bulger induced most of the Pembina settlers to transfer themselves to the older settlement at the Forks in the summer of that year, and the Company's Fort was abandoned in the spring of 1823. The United States military expedition, under the command of Major Stephen H. Long, arrived at Pembina in August of the latter year with the main object of determining the 49th degree of latitude(*w*), and the result of the observations was "that the whole of the settlement of Pembina, with "the exception of a single log house, standing near the left "bank of the river [was] included in the territory of the "United States." About three hundred and fifty people, two thirds half-breeds, the rest Swiss and Scotch, preferred to remain at Pembina under the protection of the United States government.

(*u*) Ross, 48-9; Gunn, 207, 214.

(*v*) Ross, 75.

(*w*) *Narrative of an Expedition to St. Peter's River*, etc., vol. 2, pp. 2, 38, 39, 42, 43, 227, by William H. Keating, London, 1825.

Before this date, in November 1821(*x*), there had arrived at Red River, by York Factory, a fourth class of settlers brought out by Lord Selkirk from the cantons of Switzerland(*y*), mostly of the poorer class, mechanics and artisans, ill adapted for an agricultural life. These people to the number of 177 (*z*) dispersed themselves among the De Meurons (*a*) who intermarried largely with them, but when the winter came on they were forced to go to Pembina, most of them returning the following spring as already related. Lord Selkirk through his agent Col. May, late of the Watteville regiment, had promised free grants of land, and various farming necessities on a three years credit, to all heads of families and unmarried adults. The cantons from which they came were the French-speaking ones of Neuchatel, Vaud and Geneva and the German-speaking one of Berne(*b*). At the time of their arrival, or very shortly afterwards, a formal agreement was entered into between the settlers at large and Lord Selkirk's agent at Red River specifying the duties of the former in regard to the colony. The agreement, according to the Rev. Professor Bryce(*c*), contained the signature of 49 settlers, twenty-five De Meurons or Swiss and the remainder Highlanders and Norwegians. This very valuable public document, engrossed on parchment, eleven feet long and one and a half wide, was most unfortunately allowed to be taken out of this country by its reputed owner (?) Geo. S.

(*x*) West, p. 68.

(*y*) Ross, 57; Gunn, 217-9.

(*z*) Rev. John West's entry in church registers of St. John's, quoted in C. N. Bell's *Selkirk Settlers*, p. 29.

(*a*) West, 69; Gunn, 218, 231, 239.

(*b*) *The Red River Colony*, by Gen. Augustus L. Chetlain, a son of Louis Chetlain, one of the party, Chicago, 1893. They were Protestants of the Reformed Lutheran Church; many were descendants of Huguenots of Eastern France. For a list of the names of these settlers *vide* appendix.

(*c*) *The Old Settlers of Red River*, p. 4.

McTavish(*d*), now or lately of Spokane, State of Washington, U.S.A., so it cannot be ascertained if there were any agreement in regard to the subject of this inquiry, the colony lands.

In the spring of 1822 some five families of the Swiss left Pembina for Minnesota instead of returning to the Forks, and thirteen more families followed them in the spring of 1823. In 1822 the various parties of settlers were located approximately as follows: The Scotch in what were subsequently the parishes of St. John and Kildonan, their original settlement; the De Meurons partly on Point Douglas but especially along the River Seine; the Swiss with the De Meurons on the Seine; "the French of all grades in one parish(*e*) up the main river," afterwards known as the parish of St. Norbert and part of St. Boniface, "and the half-breeds, under Mr. Grant, their chief, . . . some twenty miles up the Assiniboine, "at a place called 'White Horse Plains,' the Forks being "the common centre of the three grand divisions."

A fifth class of persons, not settlers, but yet entitled to lands in Assiniboia under the terms of the Company's grant to Lord Selkirk, that is to say employees, retired or otherwise of the Company, swelled the numbers of the settlers considerably, till they reached 1,500 souls(*f*). After the coalition of the Hudson's Bay Bay and North-West Companies the immense staff of the amalgamated Company was much reduced and in 1822 a

(*d*) Repeated application to Mr. McTavish has failed to obtain even a copy of the document, though accompanied by an offer of payment of expenses. If a copy can be obtained it will be given in the appendix. This deportation of public documents by private individuals is deserving of severe censure.

(*e*) Ross, 81. *Vide* also plan of parishes in appendix to Imperial Blue Book of 1869, in report of Exploration between Lake Superior and R. R. Settlement; also in H. Y. Hind's *Red River Exploring Expedition*, vol. 2, p. 172.

(*f*) Ross, 78.

very large number, some hundreds, of former servants of the Company, exceeding with their families the representatives of all Lord Selkirk's colonists, came to reside at the settlement (*g*) ; many of them were Orkneymen (*h*). Of these employees a labourer, as a rule, says Gunn, was entitled to 100 acres, and on settling on an eight chain lot, running 160 chains to the rear, and containing 128 acres, instead of 90 acres as originally surveyed and allotted to the first colonists, he was "given to understand that at " some future time he would have to pay in produce for " the extra twenty-eight acres at the rate of five shillings " sterling per acre. Each clerk interpreter and guide was " put in possession, for past services, of two or three eight " chain lots." It has already been noticed (*i*) that no one under the rank of Master of a trading post was to have more than two hundred acres, nor of that rank over one thousand acres. These grantees mainly settled in what were afterwards known as the parishes of St. Andrew and St. Paul (*j*), the former of which, in 1857, was the most populous of all the parishes, receiving as it did constant additions from retiring servants(*k*).

Such, then, were the numbers and location, as near as may be now ascertained, of all the inhabitants at Red River in 1822 who received allotments from Lord Selkirk or his authorized agents. No other settlers who subsequently arrived, under any conditions, were entitled to grants as a matter of right, from Lord Selkirk or his executors, save of course, retiring servants of the Company, the Swiss settlers being the last who came under his auspices, he dying at Pau, in France, on April 8, 1820. On the 24th June, 1826, almost all the remaining Swiss, De

(*g*) Gunn, 225, 226.

(*h*) Ross, 78, 110.

(*i*) *Ante* p. 6.

(*j*) Gunn, 239.

(*k*) Hind, *supra*, p. 197.

Meurons and some few others, to the number of 243 individuals, left the settlement and went to the States^(l). The lands vacated by these people were occupied by the Canadians, to whom it does not appear that Lord Selkirk made any specific promise of individual lands though, as will be seen later^(m), he made a very large grant to their church under whose auspices they were introduced, at his request, into Red River.

As mentioned before in this chapter, and for reasons there given, the writer has experienced the greatest difficulty in obtaining documentary evidence of the tenures under which the various colonists held their lands. Even thirty-five years ago, in 1857, when Professor Hind visited the settlement in command of the Canadian Exploring Expedition and made inquiry amongst the settlers for title deeds, which he desired to assist him in ascertaining certain lines of sections, he could get no information at all from them. He tells us that he had heard that the Company had granted a certain form of lease, a copy of which he had seen "through one of the resident clergy," but not "in the hands of any one of the settlers of whom I made inquiries respecting their tenure, . . . and in no single instance could I find any half-breed, in possession of a farm, acquainted with its existence. In very many instances the settlers did not know the number of their lots, and had no paper or document of any kind to show that they held possession of their land from the Company, or any other authority. . . . They knew they had paid a certain sum for their land or it had been given them in return for services, or that they had squatted upon it, and that they were in possession, but of title deeds or receipts they knew nothing. These remarks

(l) Gunn, 251; Ross, 109; Chetlain, 26.

(m) *Vide* p. 36 *et seq.*

“ refer only to those from whom the information was sought for the purpose mentioned above.”

As a matter of fact it would appear that in the great majority of cases no formal conveyance of any kind was given, only in those where it was asked for it is likely that it was granted, and the great bulk of the early settlers being in the humblest walks of life and very illiterate they would not be sufficiently alive to their own interests to demand what they were justly entitled to ; in fact the writer has been assured by many old settlers that such was the case. This state of affairs is evidenced by the following public notice (*n*) :

NOTICE is hereby given, that the colony register is now prepared for entry of title-deeds for land. Those of the settlers who have received titles, will bring them for examination and registry the first time they visit the Fort ; and those who have as yet received no titles, may have them on application to the Governor at new Fort Douglas.

By order of the Governor.

GRANT FORREST,
Accountant.

Fort Douglas, 20th January, 1825.

The laxity of the system which prevailed is manifest from this announcement which shows that though colonists had been at Red River since 1812, it was not till thirteen years after their arrival that they were in a position to have their holdings duly recorded ! Though it might seem in the face of these obstacles a hopeless task to look for documents relating to the settlers, yet the author has, aided by several friends interested in this subject, been able to get together not a few papers relating to lands in Red River. The first of these in point of date is a contract of service and agreement for a grant of land between one

(*n*) The notice above given is taken from a number of documents read by Mr. C. N. Bell before the Historical and Scientific Society of Manitoba at Winnipeg on January 27, 1889 ; *vide* the 33rd Transaction of that Society. It is much to be regretted that the historical value of these documents is much weakened by Mr. Bell's neglect to state at the time where the originals were and in whose possession. He now states that they were destroyed by fire in the autumn of 1890.

William McKay and the Company. It is given hereunder in full as it is of curious interest and is moreover a very early one, in fact the earliest that has so far been discovered(o).

(o) The original of this contract is in the possession of Mr. James Taylor of Prince Albert, whose father was in the Company's service and had a similiar contract. It is printed on the regular blank form of contract adopted by the company for use in these cases; the parts between brackets are struck out in the original, the italics signify the written portion.

IT IS HEREBY CONTRACTED AND AGREED

BETWEEN *William McKay* of (the Parish of) *Hudson's Bay* (and County of) *North America* on the one Part, and the GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND trading to HUDSON'S BAY, on the other Part, That the said *William McKay* shall (embark, when required, on board such Ship or Vessel as the Committee of the said Company shall appoint, and shall proceed to the Settlements of the said Company) in HUDSON'S BAY, (and shall there,) for the term of *Three* Years, to commence from the Day of *the date hereof* (his Embarkation,) perform all such work as he shall be required to do, and obey all the Orders which he shall receive from the Governor of the Factory or any other Officer authorized by the said Company: And the said *William McKay* shall, with Courage and Fidelity in his Station, defend the Property of the Company, their Factories, and Territories, against all Enemies or opponents whatsoever. The said *Wm. McKay* shall not carry on any trade except for the benefit of the Company and according to their Orders, and in case he shall obtain any Goods by Barter with the Indians or otherwise, the same shall be held by him in Trust for the said Company only, and shall be delivered up to their officers when required. The said *William McKay* further engages, that he shall not during his abode within the Territories of the said Company aid or abet any persons whatsoever who shall be engaged in any Trade within the Territories of the said Company, contrary to their orders and to the Privileges conferred upon them by their Charter; but he shall, at all Times during his Residence in the said Territories, maintain and defend the Rights and Privileges of the Company, and shall to the utmost of his Power, aid, support, and defend, the Officers appointed by the said Company; and shall obey the Laws and Regulations enacted by the said Company for the good Government of their Territories.

And, in Consideration of the aforesaid Services, the said Company engage to pay to the said *William McKay* so long as he shall continue in their Service, yearly Wages, after the Rate of *Twenty-five pounds per annum*, the said *William McKay* to be employed as a Clerk, and to supply the said *William McKay* for just and moderate Prices, with such articles as may be necessary for his own use. (And after the Expiration of the aforesaid

It will be remarked that if McKay served his three years faithfully he would get one hundred acres of land “to be held by the said William McKay and his heirs for ever” under the same conditions of obeying the laws and regulations of the Company, and of not infringing the privileges granted to them by their charter.” A number of contracts made on the same printed form have been referred to and there can be no doubt but that this was the regular agreement made between the Company and its employees under which lands were assigned in the settlement to such of

Term of Years, the said Company shall convey the said back to Scotland, free of Expenses.) But if the said William McKay shall have conducted himself to the full satisfaction of the said Company, and shall desire to remain in their Territories, the said Company shall assign to him *One Hundred Acres of Land*, to be held by the said William McKay and his Heirs for ever, under the same conditions of obeying the laws and Regulations of the Company, and of not infringing the Privileges granted to them by their Charter. And it is further agreed, That the said Company may dismiss the said William McKay from their Service at any period when they shall see fit. (Provided always, that the said Company bring him back to Scotland free of expense.) It is also agreed, That if the said William McKay intends to quit the Service of the said Company at the Expiration of this Contract he shall give Notice of his Intention to the Officer in authority over him, One Year before ; or if the said William McKay be on an Inland Station, he shall give Notice Eighteen Months before the Expiration of the present Contract ; and in case he fail to give such Notice, the said William McKay shall be held to have renewed his Engagement for another Year, on the Terms and under the conditions herein contained, in the same manner as if he had signed a new Contract. And it is further agreed, That if the said William McKay shall fail to perform any of the Engagements hereby contracted, he shall forfeit all the Wages and Advantages hereby promised to him. IN WITNESS whereof, this Contract is signed and sealed by the said William McKay and by Thomas Vincent duly authorized by the Governor and Committee of the said Company.

*Dated at Albany Factory the
Twenty-fifth day of June, 1813.*

(Sgd.) William McKay.
(Sgd.) Thomas Vincent.

Witnesseth :

(Sgd.) William Thomas.
(Sgd.) James Slatter.

R. Causton & Son, Printers, Finch-Lane, London.

them as had performed their agreement, both during the *régime* of Lord Selkirk and of the Company.

Now the grantees derived estates in *fee simple* under these contracts, and, as has been seen, a very large proportion of the titles in the settlement find a root in such allotments to the retired servants of the Company.

A peculiarity of the contracts is that they do not state in what portion of the Company's territories the grants shall be made ; as a matter of fact they were made at Red River, but the point would be a nice one in case of an attempt now to compel the Company to carry out the agreement on their part and allot land to some of their former servants who, to the writer's knowledge, claim never to have received such a grant. It is more or less a matter of speculation, and possibly idle, to consider if a proper case for relief were made out what a court of equity would compel the Company to do. It would seem that the matter would largely turn on the time when the agreement was entered into, for it could scarcely be contended on behalf of the Company that a grant of one hundred acres, say on an iron bound promontory of Hudson's Bay, would be a sufficient answer to their agreement to assign a retired servant 100 acres "should he desire to remain in their territories," for he would have no desire to remain under such conditions. They would be probably directed to conform as near as practicable to their undertaking. The number of such claims is necessarily small as the statute of Limitations would bar most of them.

The next document to be considered evidences the, for many reasons, most important estate granted in Rupert's Land. This is also an estate in fee simple and consists in the conveyance by the Earl of Selkirk, by way of lease and release (*p*), bearing date the 18th and 19th days of

(*p*) { Archiepcal
Seal. } }

THIS INDENTURE made the eighteenth day of May in the year of

May, 1818, respectively, on certain trusts as therein mentioned, to the then Roman Catholic Bishop of Quebec and

Our Lord One thousand eight hundred and eighteen, Between the RIGHT HONOURABLE THOMAS EARL OF SELKIRK, *of the first part*;

And the RIGHT REVEREND JOSEPH OCTAVE PLESSIS, ROMAN CATHOLIC BISHOP of the DIOCESE OF QUEBEC, Jean Henri Auguste Roux, of Montreal, in the District of Montreal, and Province of Lower Canada, Clerk, Superior of the Seminary of Montreal at Montreal aforesaid, and Vicar General of the said Diocese, Saveuse de Beaujeu, of Montreal, aforesaid, Esquire, Hugues Heney, of Montreal, aforesaid, Esquire, Advocate, Joseph Norbert Provencher, and Severe Joseph Nicholas Dumoulin, of Montreal, aforesaid, Clerks, *of the second part*;

Witnesseth that the said party of the first part for and in consideration of the sum of five shillings of good and lawful money of the Province of Lower Canada, to him in hand paid by the said Parties of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said parties of the second part their executors administrators and assigns a certain tract, piece or parcel of land, situate, lying and being in the Territories granted to the Governors and Company of Adventurers of England trading into Hudson's Bay to wit in Rupert's Land commonly called the Hudson's Bay Territories, that is to say all that certain tract piece or parcel of land situate lying and being on the East side of Red River and bounded by a line beginning on the Right bank of Red River aforesaid at the mouth of a small river known by the name of the Riviere de la Seine and running in an easterly direction for the distance of one hundred English statute chains along the Southern boundary of a lot of land laid out and assigned to Jean Baptiste La Gimoniere, and thence running due east for the further distance of five English Statute miles, thence due south for four English Statute miles, thence due West until the said line shall reach the said River de la Seine, and thence in a northerly direction, along the stream of the said River de la Seine, to the place of beginning, and also that certain other piece or parcel of land lying being and situate on the right bank of Red River aforesaid and nearly opposite to the mouth of Assiniboine River, bounded on the Westward by the said river and extending in front along the same for the space of three hundred and thirty yards or fifteen English statute chains northward from the boundary of a lot of land assigned to Frederick Damien Heurter, bounded on the southward and northward by lines running at right angles to the shore of the River and extending for the space of fifteen statute chains, and bounded on the eastward by a line parallel to the course of the River, and the Reversion and Reversions, Remainder and Remainders, Rents, issues and profits thereof with the appurtenances, to have and to hold the same and every part and parcel thereof with the appurtenances unto the said parties of the second part,

to Fathers Provencher and Dumoulin, already mentioned, and three others, of the large and very valuable tract of

their Executors Administrators and Assigns, from the day next before the day of the date hereof for and during and until the full end and term of one whole year from thence forth next ensuing and fully to be complete and ended, yielding and paying therefor at the expiration of the said term unto the said party of the first part one pepper-corn if demanded. To the intent that by virtue of these presents and by force of the statute for the transferring of uses into possession, the said parties of the second part may be in the actual possession of the said Premises and appurtenances, and be thereby enabled to take and accept of the grant and release of the Reversion and Inheritance to them and the survivors of them and to such other persons to whom any conveyance or conveyances of the said premises shall or may at any time hereafter be made or who may by the said parties of the second part be associated with them the said parties of the second part in this behalf or with the survivors of them the said parties of the second part by virtue and conformably to one other Indenture to be made bearing date the day next after the day of the date of these presents, for ever upon the trusts and sole intents uses and purposes to be declared thereof in and by the said other indenture so to be made, bearing date the day next after the day of the date of these presents as aforesaid.

In Witness whereof the said parties to these presents have hereunto respectively set their hands and seals the day and year first above writen.

(Signed) "Selkirk" (L. S.)

(Signed) "J. O. Plessis,

Signed sealed and delivered at C. R. Bp. of Quebec." (L.S.)
Montreal in the Province of Lower (Signed) "Roux P. (L.S.)"
Canada, where no stamps are used, (Signed) "Jh. N. Provencher" (L.S.)
in presence of (Signed) "Sev. Dumoulin" (L.S.)

(Signed) "D. Mondelet."

(Signed) "S. de Beaujeu" (L.S.)

(Signed) "L. Viger."

(Signed) "H. Heney" (L.S.)

(Signed) "L. Th. Bédard."

(Signed) "Cl. Gauvreau." Witnesses.

{ Archcal } Pour vraie copie.
Seal. } (Signed) C. Baillargeon, Pth. Secrétaire Archeriche
de Quebec, 5 Aout, 1870.

THIS INDENTURE made the nineteenth day of May in the year of Our Lord one thousand Eight hundred and eighteen,

Between the RIGHT HONOURABLE THOMAS EARL OF SELKIRK, of the first part,

And the Right Reverend Joseph Octave Plessis, Roman Catholic Bishop of the Diocese of Quebec, Jean Henry Auguste Roux of Montreal in the District of Montreal and Province of Lower Canada, Clerk

land, containing no less than 10,392 acres (mentioned in the present Hudson's Bay Company Red River settle-

Superior of the Seminary of Montreal aforesaid, and Vicar General of the Diocese of Quebec aforesaid, Saveuse de Beaujeu of Montreal, aforesaid Esquire, Hugues Heney of Montreal aforesaid, Esquire, Advocate, Joseph Norbert Provencher and Severe Joseph Nicholas Dumoulin of Montreal aforesaid Clerks, *of the second part.*

Whereas a grant hath been heretofore made by the Governor and Company of Adventurers of England trading into Hudson's Bay of a certain tract of land and country situated and being in the Territories of them the said Governor and Company of Adventurers of England trading into Hudson's Bay, distinguished by the name of Rupert's Land and otherwise called the Hudson's Bay Territories.

Now therefore this Indenture witnesseth that the said party of the first part for and in consideration of the sum of five pounds current money of the Province of Lower Canada to him well and truly paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and also for the purpose of contributing to introduce into the said Territories, the benefits of religion, morals and good order, hath granted, bargained, sold, aliened, released, conveyed and confirmed and by these presents doth, grant, bargain, sell, alien, release, convey, and confirm, unto the said parties of the second part in their actual possession now being by virtue of a bargain and sale to them thereof made for one whole year by indenture bearing date the day next before the day of the date of these presents and by force of the statute for the transferring of uses into possession and to the survivor or survivors of them and such other person or persons who may hereafter by them the said parties of the second part or the survivors or survivor of them be associated to and with them the said parties of the second part, or the survivors or survivor of them, by virtue of the trust hereinafter mentioned as hereinafter specified, all that certain tract, piece or parcel of land situate, lying and being in the plantation or colony of Rupert's land and in the Territories of the said Governor and Company of Adventurers of England trading into Hudson's Bay commonly called the Hudson's Bay Territories aforesaid and being part of the land comprehended in the grant before mentioned from the said Governor and Company, that is to say, all that certain tract piece or parcel of land lying on the East side of Red River, and bounded by a line beginning on the right bank of Red River aforesaid at the mouth of a small river known by the name of the River de la Seine and running in an easterly direction for the distance of one hundred English statute chains along the southern boundary of a lot of land laid out and assigned to Jean Baptiste La Gimoniere and thence running due east for the further distance of five English statute miles then due south for four English statute miles then due west until the said line shall reach the said river de

ment Register B as lot No. 903) on which are the cathedral, archbishop's palace, college, convent and other edi-

la Seine, and thence in a northerly direction along the stream of the said river de la Seine to the place of beginning, and also that certain other piece or parcel of land, situate lying and being on the right bank of Red River aforesaid and nearly opposite to the mouth of Assiniboine river, bounded on the westward by the said river and extending in front along the same for the space of three hundred and thirty yards or fifteen English Statute chains northward from the boundary of a lot of land assigned to Frederick Damien Heurter, bounded on the southward and northward by lines running at right angles to the shore of the said river and extending for the space of fifteen statute chains and bounded on the eastward by a line parallel to the course of the river, with all the edifices thereon and advantages to the same now or heretofore belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and every part and parcel thereof with the appurtenances and also all the estates, right, title, interest, property claim and demand whatsoever in law or equity of him the said party of the first part, of, in and to the same: to have and to hold all and singular the said premises hereby granted and bargained or meant and intended so to be, with their and every of their appurtenances unto the said parties of the second part, the survivor and survivors of them and such other person or persons who may be hereafter by them the said parties of the second part, or the survivor or survivors of them associated to and with them the said parties of the second part or the survivors or survivor of them by virtue of the trust hereinafter mentioned and as hereinafter specified, forever: but upon the trust nevertheless and to and for the uses, intents and purposes hereinafter expressed and declared of and concerning the same, and for none other whatsoever, that is to say upon the trust that the said parties of the second part the survivors or survivor of them; and such other person or persons to whom any conveyance or conveyances of the said premises shall at any time hereafter be made by them the said parties of the second part or the survivors or survivor of them and such other person or persons who may hereafter by the said parties of the second part or the survivors or survivor of them be associated to and with them the said parties of the second part or the survivor or survivors of them by virtue of the trust hereinafter mentioned and as hereinafter specified; shall and will from time to time and all times hereafter stand seized and be possessed of the said premises hereby granted and released or intended so to be to the intent and purposes that the said lands and premises and all the rents, issues, and profits of the said land and premises and all and every the appurtenances thereof shall be employed to and for the use and support of a Roman Catholic Church to be established at Red River aforesaid and of the priests to be appointed to administer

fices of the Roman Catholic church. The originals of these most important documents are in the archiepiscopal

the rites of the Roman Catholic Religion at Red River aforesaid under the Government and control of the said Bishop of Quebec, conformably to the rules, regulations, ordinances, customs, usages and discipline of the said Catholic Diocese of Quebec; And upon the further trust and confidence that whenever the said Trustees shall or may be reduced to the number of three, then the said trustees or the survivors or survivor of such three trustees shall make a new conveyance to fill up the number of seven trustees with such persons as the said three Trustees or the survivors or survivor of them may think fit and proper; or when the said trustees parties to these presents shall be reduced to the number of three trustees then the said three trustees or the survivors or survivor of them shall fill up the number of seven trustees, by the said three Trustees or their survivors or survivor associating to and with themselves or himself for the purpose of filling up the number of seven Trustees such persons as they the said three Trustees or the survivors or survivor of them may see fit and proper to appoint in such manner or by such good and valid act or deed as to them the said three Trustees or the survivors or survivor of them may seem fit and proper to the intent that there may be a perpetual succession of fit persons to represent the said parties of the second part for the purposes of the uses, trusts and intents herein contained, and every of them according to the true intent and meaning hereof; the said premises so hereby granted and bargained to be forever subject to the conditions expressed in the said grant heretofore made by the said Governor and Company to the said party of the first part by indenture bearing date the twelfth day of June one thousand eight hundred and eleven.

And the said party of the first part for himself, his heirs, executors and administrators, doth covenant, grant, promise and agree to and with the said parties of the second part, their heirs and assigns that he the said party of the first part is now the true, lawful and rightful owner of all and singular the said premises with the appurtenances, and is lawfully possessed of a good and clear estate of inheritance therein in fee simple, and hath good right, full power and lawful authority to grant, release, and convey the same from all incumbrances whatsoever, according to the true intent and meaning of these presents, and further that he the said party of the first part and his heirs shall and will from time to time and all times hereafter, upon the reasonable request, and at the proper cost and charges in the law of the person or persons herein beneficially interested, or their successors, do, execute, and perform or cause to be done, executed and performed all and every such further and other lawful and reasonable act and acts, thing and things, device and devices in the law whatsoever, for the further or more perfect confirming and assuring of all and singular the premises aforesaid with the

archives at Quebec, of which His Grace of St. Boniface has notarial copies, and of these kindly permitted copies to be taken. As early as 1820, Father Provencher had commenced the foundation of a church near the site of the present Cathedral(q). As before remarked no promise,

appurtenances and every part and parcel thereof unto the said party of the second part and to the survivors and survivor of them and such other persons who may be hereafter by them the said parties of the second part or the survivors or survivor of them associating to and with them the said parties of the second part, or the survivors or survivor of them by virtue of the trust hereinbefore mentioned in that behalf and in the manner hereinbefore specified for the trusts and to the intents, uses, and purposes aforesaid as by the said person or persons herein beneficially interested or their successors or by their counsel learned in the law shall be reasonably advised, devised and required : and also that he the said party of the first party and his heirs, the said hereby granted and bargained premises with the appurtenances and every part and parcel thereof unto the said parties of the second part and the survivors or survivor of them and such other persons as may hereafter by them the said parties of the second part or the survivors or survivor of them, associated to and with them the said parties of the second part or the survivors or survivor of them, by virtue of the trust hereinbefore mentioned in that behalf and in the manner hereinbefore specified, against the lawful claims and demands of all persons whomsoever claiming and to claim by or from under him the said party of the first part, his heirs or assigns, shall and will warrant and forever defend.

In Witness whereof the parties to these presents have hereunto respectively set their hands and seals the day and year first above written, at Montreal aforesaid, where no stamps are used, in the presence of the undersigned witnessess, these presents having been made double.

(Signed) "Selkirk" (L.S.)

(Signed) "J. O. Plessis C. R. Bp.

of Quebec." (L.S.)

(Sig.) "D. Mondelet."

(Sig.) "L. Viger."

(Signed) "Roux P." (L.S.)

(Sig.) "M. O'Sullivan."

(Signed) "Jh. N. Provencher, Ptre"(L.S.)

(Sig.) "Lt. Th. Bédard."

(Signed) "Sev. Dumloun," (L.S.)

(Sig.) "Cl. Gauvreau."

(Signed) "S. de Beaujeu." (L.S.)

Witnesses. (Signed) "H. Heney" (L.S.)

{ Archiepal }
{ Seal. }

Pour vraie copie conforme a l' original.
(Sg.) C. Baillargeon, Pth. Secrétaire, Archevêché de
Quebec, 5 Aout, 1870.

(q) Hind's Red River Exped., *supra*, p. 174 ; and Amos' plan of Settlement, *supra*, note G. *Vide* also Archbishop Taché's *Vingt Années*

now in evidence, was made by Lord Selkirk at the time this conveyance was executed at Quebec, or at any other time, to grant lots to individual Canadian settlers. He apparently had full confidence in the ability of their leaders, their priests, with the aid of this generous gift, to protect the interests of their flock and to "contribute to introduce into the said Territories the benefits of religion, morals and good order," and in this he was not mistaken.

It was the practice of Lord Selkirk's executors to appoint as their agent the Company's Governor of Assiniboia, consequently when Captain Bulger arrived at Red River, in June, 1822, to enter upon the duties of his office he brought with him the following document (*r*) :

LONDON, 27 March, 1822.

To Andrew Bulger, Esq., etc. :

SIR,—I hereby authorize you to take charge of the Red River settlement and of all the affairs of the estate of the late Lord Selkirk in Rupert's Land ; to claim and take possession of all papers, books and property of every description belonging to the estate or to the executors and trustees of the late Earl of Selkirk ; also to recover all debts due to the said estate or to the said executors and trustees by any person in Rupert's Land and to give the necessary receipts and discharges in said matters.

I am sir,

Your obedient servant,

A. COLVILLE,

Executor and Trustee of Thomas, the late of Selkirk.

In addition to this document Mr. Bulger brought with him a power of attorney (*s*), dated May 19, 1822, from the

de Mission dans le Nord-Ouest de L'Amérique, and his *Esquisse sur le Nord-Ouest de L'Amérique*.

(*r*) Bulger Papers, vol. 2, p. 76, in Canadian Archives at Ottawa. At page 75 of the volume is an ample power of attorney from the Company to Bulger authorizing him to exercise as *locum tenens* all the powers under the charter for the government of Assiniboia, being part of Rupert's Land ; this is dated at London, March 27, 1822.

(*s*) KNOW ALL MEN BY THESE PRESENTS, That We, Sir James Montgomery of Stanhope in the County of Peebles in Scotland, Baronet,

accepting and surviving trustees of Lord Selkirk's will appointing him and Mr., afterwards Sir George Simpson [described as "one of the governors appointed by (the Hudson's Bay Company) for their Territories called Rupert's Land"] their attorneys for the purpose of *selling and disposing* of the whole or any part of the District of Assiniboia "at such price or prices to be paid at such time or times as may be agreed upon" between them "and any person or persons willing to make *such purchases*, etc."

The plain intention of this power of attorney is that the donees of the power should *sell* the land to the settlers or

present Knight of the Shire for the said County, Adam Maitland of Dundrennan in the County of Kirkcudbright in Scotland, Esquire, Andrew Colville of Ochiltree and Cromie in the County of Fyfe in Scotland and of Leadenhall street in the City of London, Esquire, John Halkett formerly of Seymour Place in the Parish of Saint George's Hanover Square within the liberties of Westminster now of the Town of Bright-helmstone in the County of Sussex, Esquire, at the present beyond the seas, and James Wedderburn, Esquire, His Majesty's Solicitor General for Scotland, considering that whereas the deceased Thomas Earl of Selkirk by his last will and Testament duly proved in the Prerogative Court of Canterbury and duly registered in the Register Books kept at the Settlement on the Red River in the District of Ossiniboia in the territories of the Company of Adventurers of England trading into Hudson's Bay did authorize and direct us the accepting and surviving acting Trustees under his said last will and testament (the other persons therein named having refused to accept and having renounced the said Trust by Deed recorded in the said Register Books) to sell and dispose of the whole or any part of the said District of Ossiniboia granted to the said Thomas Earl of Selkirk his heirs and assigns by the said Company of Adventurers trading into Hudson's Bay and it being necessary that proper persons should be appointed in the said District called Ossiniboia for such purposes of sale. THEREFORE We, the said Sir James Montgomery, Baronet, Adam Maitland, Andrew Colville, John Halkett and James Wedderburn have made constituted and appointed and by these presents do make constitute and appoint George Simpson, Esquire, one of the Governors appointed by the said Governor and Company of Adventurers trading into Hudson's Bay for their Territories called Rupert's Land of which the said District of Ossiniboia granted by them to the said Thomas Earl of Selkirk formed a part, and Andrew Bulger, Esquire, Governor of the said district called Ossiniboia, our true and lawful Attorneys, hereby granting and committing to them jointly full power and authority for us

others, following out Lord Selkirk's policy, and there is nothing that would suggest an intention to *lease* it.

Mr. Robert Parker Pelly, cousin to Sir John Henry Pelly, Bart., Governor of the Company, who succeeded Governor Bulger held, in common with Governor Simpson, a similar document dated May 19, 1823.

It would be safe to assume that these donees availed themselves of the powers so granted them and sold lands in Ossiniboia, in fact one of the few documents existing is a rather crude agreement of sale between Governor Pelly, for the executors, and Mr. Robert Logan, sheriff and councillor of Ossiniboia, by which the latter purchased no

and in our names to treat with any person or persons for the selling and disposing of any part of the Lands in the said District of Ossiniboia acquired by the said Thomas Earl of Selkirk from the said Governor and Company of Adventurers trading into Hudson's Bay at such price or prices to be paid at such time or times as may be agreed upon by and between the said George Simpson and Andrew Bulger and any person or persons willing to make any such purchases and upon such conditions and subject to such covenants as the said George Simpson and Andrew Bulger may think fit in that behalf and to do every act matter or thing necessary for completing such purchases or for completing any agreement that may have been made by the said Thomas Earl of Selkirk for the granting or selling any part of the Land in the said District called Ossiniboia previous to his death or that may have since been made and for that purpose for us and in our names to sign, seal and deliver any demise, assignment, conveyance or assurance that may be necessary to any person or persons that may have agreed to purchase upon any contract or agreement for the purchase of any part of the said Land in the said District called Ossiniboia that may have been made during the life time of the said Thomas Earl of Selkirk or that may have been made since his death or any demise, assignment, conveyance or assurance that may be necessary for the completing any agreement for the sale and purchase of any part of the land in the said district that may be made by or with the said George Simpson and Andrew Bulger and to receive the price or consideration agreed to be paid or given for or in respect of any such sale and purchase and to ask demand sue for and recover the same and all rents monies or other things whatsoever agreed for, due or payable for or in respect of the Premises and also to ask demand sue for and recover of and from every person and all persons whatsoever every sum and all sums of money which was or were due to the said Thomas Earl of Selkirk in the said District called Ossiniboia at the time of his dea

less an historic spot than old Fort Douglas itself, the colony mill, and one hundred acres of land. This property, a considerable portion of which is yet in the possession of Mr. Alexander Logan, son of the purchaser, has become very valuable, forming part of the city of Winnipeg, and is now to a large extent built over, though a considerable portion of what was once the site of the Fort has fallen into the Red River, owing to its banks being eaten away by the ever encroaching stream and also demolished by several great floods. The document itself has an historical

or that has or have since become due or that shall hereafter become due for or in respect of any part of his estate situated there and on receipt of such moneys or other things to grant for us and in our names sufficient discharges and quittances which shall be equally good as if granted by us.

In witness whereof we have hereunto set our hands and seals this eleventh day of May in the Year of our Lord one thousand eight hundred and twenty-two years.

Signed sealed and delivered by the said Sir James Montgomery (being first duly stamped) in the presence of	}	(Sgd) Jas. Montgomery (Seal).
(Sd) Saml. Bishopp.		
" Geo. Losach.		

Signed sealed and delivered by the said Adam Maitland (being first duly stamped) in the presence of	}	(Sgd) Ad. Maitland (Seal).
(Sd) William Anderson.		
" Andrew Mack.		

Signed sealed and delivered by the within Andrew Colvile in the pre- sence of	}	(Sgd) A. Colvile (Seal).
(Sd) Alex. Mundell.		
" Saml. Bishopp.		

Signed sealed and delivered by the within John Halkett at York Factory Hudson's Bay in the presence of	}	(Sgd) J. Halkett (Seal).
(Sd) James Keith.		
" J. G. McTavish.		

Signed sealed and delivered by the within Jas. Wedderburn in the pre- sence of	}	(Sgd) Jas. Wedderburn (Seal).
(Sd) Alex. Mundell.		
" Saml. Bishopp.		

value and is very quaint (*t*) ; it is in the possession of Mr. Alexander Logan. No other agreement nor document of any kind evidencing a *sale*, signed by Mr. Pelly, has come to light, though after his departure in June, 1825, Mr. Simpson sold portions of the settlement.

It is most important to bear in mind, when considering "any contract or sale of lands" in Assiniboia, that the

(*t*) AN AGREEMENT made this eleventh day of June, one thousand eight hundred and twenty-five, between Robert Logan of Red River settlement, of the one part, and the Executors of the late Thomas, Earl of Selkirk, by Governor Pelly, their agent, of the other part, as follows :

The said Robert Logan hereby agrees to purchase from the said Executors of the late Thomas Earl of Selkirk, the wind grist-mill now being erected, with the old establishment of Fort Douglas comprising one hundred acres of land for the sum of four hundred pounds sterling, payable as follows, viz : one hundred and fifty pounds on or before the 1st June, 1826 ; one hundred and fifty pounds on or before the 1st June, 1827, and one hundred pounds on or before the 1st June, 1828. And the said Robert Logan further agrees to grind any grain or pulse that may be brought to the said mill from settlers or others at a moult not exceeding that which is established in Canada, to be determined by the Gentlemen of the Catholic Mission. It being well understood that the said mill shall be put into the possession of the said Robert Logan in a complete and finished state.

In witness whereof the said parties have hereunto set their hands this 9th day of July, 1825.

Witness, { D. MCKENZIE.
FRAS. HERON.

(Sd.) ROBT. LOGAN.
(Sd.) R. P. PELLY.

It is further agreed between Governor Pelly and Mr. Logan that from the period of the mills being delivered up to Mr. Logan, Mr. Mitchell shall be transferred to him until the expiration of his present contract, which takes place on the 1st of June, 1826, for which consideration Mr. Logan shall pay the one half of Mr. Mitchell's expenses to the estate of the late Earl of Selkirk from the time the mill is delivered until the first of June aforesaid.

Witnesses, { (Sd.) D. MCKENZIE.
(Sd.) FRAS. HERON.

(Sd.) ROBT. LOGAN.
(Sd.) R. P. PELLY.

It is further understood that the charge or moult for grinding shall be 10 per cent., *i. e.*, if ten bushels are ground, one bushel shall be the allowance for the mill.

(Sd.) GEO. SIMPSON,

9th March, 1827.

Fort Garry.

statute of Frauds, 29 Charles II., c. 3, never was in force (u) in Rupert's Land, as it was not passed till after the grant of the Company's charter in 1670, and a mere verbal bargain and sale, therefore, was sufficient to pass the title both at law and in equity. The statute of Enrollments, 27 Hen. viii. c. 16, which required every bargain and sale of any estate of inheritance or freehold to be by deed indented and enrolled within six months from its date in one of the courts of Westminster, or before the *custos rotulorum* and two justices of the peace and clerk of the peace in which the lands lay, or two of them at least, whereof the clerk of the court should be one, was because of the primitive state of the settlement which rendered it impossible to comply with its provisions, in a similiar position.

Though documents evidencing Governor Pelly's sales of lands are scarce, such is not the case as regards the acts of Governor Simpson. Many of his "certificates" have come down to us, the writer having had upwards of a dozen in his possession at one time. They are almost invariably written on a manuscript blank in an engrossing hand, the spaces being filled in nearly always by the signer. The size is about three quarters that of this page. Hereunder are five examples, chosen from those above mentioned. The small capitals are not in the originals.

1. Mr. Wm. R. Smith has PURCHASED from the estate of Lord Selkirk, one hundred acres of land, or six chains frontage, on the west side of the Red river, adjoining John James Smith's Lot at the rate of ten shillings per acre, amounting to Fifty pounds sterling, of which sum he has this day paid in cash Twenty pounds, and the remainder of [the PURCHASE MONEY, say £30 Stg., he promises to pay upon or before the 1st day of June, 1836, otherwise this agreement shall be void. The boundaries to be adjusted when the land shall be regularly surveyed.

(Sd.) Geo. Simpson, Govr.

Red River Settlement,
25th May, 1833.

(u) *Sinclair v. Mulligan*, 3 Manitoba Reports 481, and 5 Man. Rep.

2. Edward Moad occupies a lot of Two hundred and fifty acres land, say seven and a half chains frontage, or one hundred and twenty-five acres, on each side of the Red River, immediately above the Revd. Mr. Cochran's, the boundaries to be settled when the land shall be regularly surveyed. Twenty-five acres of which he received FREE OF COST from the Hudson's Bay Company, in consideration of past services, and the remaining two hundred and twenty-five acres he agrees to PURCHASE at the rate of Ten shillings stg. per acre, amounting to £112.10.0, half of which sum say £56.5.0, he has this day paid in cash, and the remaining half he hereby promises to pay off by the 1st of June, 1836.

(Sd.) *Geo. Simpson, Govr.*

Red river Settlement 11th May, 1833.

(On the reverse side of the above is the following indorsement, all in handwriting of Geo. Simpson :)

These are to certify that Edward Mowat (*sic*) has been put in possession of one chain on the West side and one chain on the east side the the River immediately adjoining the land he now occupies within mentioned which he receives FREE OF COST in further consideration of past services for all of which formal Title Deeds will be given when the survey of the settlement shall have been completed. The remainder of the PURCHASE MONEY, say £56.5s., to be paid up befor the 1st June, 1839, instead of the 1st June, 1836, as within noticed.

(Sd.) *Geo. Simpson, Govr.*

Red River Settlement,
25th April, 1835.

3. These are to certify that *James Sandison* has been put into possession of six chains frontage or one hundred acres of Land on the North side of the Assiniboine river above the Sturgeon Creek and that a formal deed will be given him for the same after the survey of the settlement shall have been completed, *free of cost in consideration of past services.*

(Sd.) *Geo. Simpson, Govr.*

Forks, Red River Settlement,
12 May, 1835.

This cancels all other certificates heretofore given for land.

These three are now in the possession of James Taylor, of Prince Albert.

And the following two have been kindly lent by Thomas Robinson, Esq., barrister-at-law, of Winnipeg.

George Sandison has sold to Jerry Cook, 3 chains on the lower side of the lot.
 Witnesses, W. H. Cook.
 Thomas Halcro.
 20th May, 1835.

4. These are to certify that *Geo. Sandison* has been put in possession of *eight* chains frontage or *one hundred* acres of Land on the West side of the *Main* river above the *Image Plain*, and that a formal deed will be given him for the same after the Survey of the Settlement shall have been completed, *free of cost in consideration of past services.*

(Sgd.) Geo. Simpson.

Forks Red River Settlement,
 11 May, 1835.

This cancels all other certificates heretofore given for land.

5. These are to certify that the *Widow of John Scarth* has been put in possession of *eight* chains frontage or *one hundred* acres of Land on the Main river below the Forks and that a formal deed will be given him (*sic*) for the same after the survey of the Settlement shall have been completed, in consideration of services rendered by her late Husband (free of cost.)

Sgd. Geo. Simpson.

Forks Red River Settlement, }
 11 May, 1835.

This cancels all other certificates heretofore given for land.

[Written on back in Sir Geo. Simpson's hand.]

Two chains or 25 acres upper end of the Lot given to William Goddy in payment of a debt of Eight Pounds due to his late Father's estate by Scarth for which this Piece of Ground was his Security—the 2 adjoining chains or 25 acres below the 2 already named given to William Lisk in payment to services rendered to Scarth by Lisk, and the remaining Four chains or 50 acres held by the widow.

Geo. Simpson,

11 May, 1835.

It will be remarked that, save the first, in all the above cases the grantees got their land, or at least the greater part of it, free, in consideration of past services. In many instances the holders of such certificates recorded sales on their part in the margin, as in the fourth above given. In all of them is a reference to the survey about to be completed and in four of them a promise of "formal title deeds" when that survey should be finished. It is extremely doubtful whether any of the allottees got his conveyance.

There is no suggestion whatever of a lease in any of these documents but on the contrary not seldom some reference to a *purchase*.

So far as is known none of Simpson's certificates bears date after 1835 so this would be another circumstance in favour of the assumption of a prior page, 19, that it was not till 1836 that the Company took over the settlement. A further authority in favour of that date is found in a late Lieut.-Governor of Manitoba, the Hon. Alex. Morris, who states that that was the year in which the Company bought back Assiniboia (*v*).

These certificates were, under the "Act respecting conflicting claims to lands of occupants in Manitoba" (*w*), receivable in evidence before the commissioners appointed to report on such claims, and were in effect treated as entitling the holder, coupled with possession, to an estate in fee simple. The Dominion Government recognized the claims of such occupants in 1875 by enacting (*x*) that "persons satisfactorily establishing undisturbed occupancy of any lands within the Province prior to, and being by themselves or their servants, tenants or agents, or those through whom they claim, in actual peaceable possession thereof, on the 15th day of July, 1870, shall be entitled to receive letters patent therefor, granting the same absolutely to them respectively (*sic*) in fee simple."

Many of the preceding pages of this chapter have gone to show that the estates granted by Lord Selkirk to the settlers were estates in fee simple. Nevertheless in some few cases leases for long terms of years were granted.

The earliest reference to this form of tenure occurs in a letter from Governor Miles Macdonell (*y*) to Lord Selkirk,

(*v*) *The Treaties of Canada with the Indians*, p. 14. Toronto, n. d.

(*w*) 38 Vic. cap. 43, sec. 4, 1875.

(*x*) 38 Vic. cap. 52, s. 1.

(*y*) Report on Canada Archives for 1886, p. clxxxvii.

Both of these leases bear the same date, August 13, 1824, and are signed by "R. P. Pelly, Governor of Assiniboia" and Robert Logan the lessee. The lands demised

land, and of Leadenhall Street, in the City of London, Esquire; JOHN HALKETT, formerly of Seymour Place, in the Parish of Saint George's, Hanover Square, afterwards of Spring Garden, in the Parish of St. Martin in the Fields, in the Liberties of Westminster, Esquire; and JAMES WEDDERBURN, Esquire, His Majesty's Solicitor-General for Scotland; Trustees, to whom the deceased THOMAS EARL OF SELKIRK devised all his real and personal Estates wheresoever situated, by two several Testamentary Dispositions, the one dated the twentieth day of December, in the year 1806, and the other dated the 7th day of August, in the year 1819; both duly proved in the Prerogative Court of His Grace the Archbishop of Canterbury, on the sixth day of June, in the Year 1820; and also duly registered in the Register Book A, folio , of the Registry of this Colony, at on the Banks of Red River, (the other Trustees named and appointed by the said deceased Thomas Earl of Selkirk having declined to act, and having renounced the Trust meant to have been reposed in them, by a certain Instrument of Renunciation, bearing date the first day of July, in the Year 1820, also registered in the said Register Book A, folio) of the one Part, and

Whereas by Indenture bearing Date the 12th Day of June, 1811, and made between the Governor and Company of Adventurers of England, trading into Hudson's Bay, of the one part, and the said deceased Thomas Earl of Selkirk of the other Part, Ninth-Tenth Parts of a certain Tract of Land, or Territory, being within, and forming Part of certain Lands and Territories of the said Governor and Company in North America, called Rupert's Land have been conveyed and assured unto, and to the Use of, the the said Earl of Selkirk, his Heirs, and Assigns, for ever; nevertheless, upon, under, and subject to, certain Conditions in the said Indenture, expressed and declared concerning the same, which Indenture is duly registered in the Registry of this Colony, kept at , in Book A, folio an Abstract of which Conditions is contained in Schedule, No. 1 hereto annexed.

And whereas the said is desirous of establishing himself as a Settler upon the said Land, and the said first Parties to these Presents have agreed to Demise such Part thereof as in hereinafter described, unto the said in manner hereinafter mentioned. Now therefore, this Indenture Witnesseth, that in pursuance of the said Agreement, and in con-

Lot No.

Registered Book No.

Fol.

were lots 819 and 845 containing 120 and 215 "square acres" respectively, and all on the east bank of the Red River. The last clause is worthy of notice for it provides

sideration of _____ of lawful English Money, paid by the said _____ to the said first Parties of these Presents, immediately before the Execution of these Presents, the Receipt whereof is hereby acknowledged, the said Parties to these Presents do, by these Presents, Grant, Demise, and Lease unto the said Executors, Administrators, and Assigns, all that Parcel of Land, being part of the said Tract of Land, or Territory, conveyed and assured to the said deceased Thomas Earl of Selkirk, as aforesaid, containing by Admeasurement _____ square Acres and bounded by an imaginary Line, as follows, (that is to say) :

To have and to hold the said Land hereby demised, or intended so to be, and every Part thereof unto the said _____ Executors, Administrators, and Assigns, from the Day of the Date of these Presents, for the full Term of One Thousand Years, thence next ensuing, and fully to be complete and ended; Yielding and paying therefor Yearly and every Year, during the said Term, the Rent of _____

Provided always and the said _____ doth hereby declare and agree to and with the said first Parties to these Presents, and their Assigns, and the Heirs and Assigns of the said Thomas Earl of Selkirk, that the said _____ Executors, Administrators, Assigns, and all other persons whomsoever, deriving Title by, from, through, or under him, them, or any of them, shall and will at all times during the said Term, observe, perform, fulfil, and keep all and singular the Conditions expressed and contained in the hereinbefore-recited Conveyance from the said Governor and Company to the said deceased Thomas Earl of Selkirk, of which an Abstract is given in Schedule No. 1, hereunto annexed, so far as the same Conditions concern and apply to the Land hereby demised: and also the Orders and Regulations specified in Schedule No. 2, hereunto annexed, in so far as the same apply to the Land hereby demised.

And also that the said _____ or _____ Assigns, shall and will henceforth settle and establish himself, herself, or themselves upon the said Piece of Land hereby demised; And also that he, she, they, or some one of them, shall and will, within _____

Years from the Date of these Presents, bring or cause to procure to be brought into a State of Cultivation

that the lessee must register not only "these presents" but "every subsequent conveyance, assignment, or lease of the hereby demised premises, or of any part thereof,

Part of the said demised Land, and thenceforth continue the same in such State.

And further that the said Executors, Administrators, and Assigns, shall and will from time to time, and at all times during the said Term, contribute in a due Proportion to the Expense of all Public Establishments, whether of a Ecclesiastical, Civil, Military, or other Nature, which shall or may be formed under the authority of the Charter given and granted by his late Majesty King Charles the Second, to the said Governor and Company, and their Successors, for the Regulation of the Settlement or Settlements upon the land so conveyed to the said deceased Thomas Earl of Selkirk as aforesaid, especially in or towards the Making and Repairing of Public Roads and Bridges. And further, that the said

Executors, Administrators, Assigns, or other Person, or Persons deriving Title by, from, through, or under him, them, or any of them, shall not at any time or times during the said Term, Distil, or cause or procure to be Distilled, Spiritous Liquors of any Nature or Kind soever, upon the Land hereby demised, nor upon or within any Part of the Land or Territory so conveyed to the said deceased Thomas Earl of Selkirk as aforesaid, nor shall any other Person or Persons whomsoever, at any time or times during the said Term, Distil any such Spiritous Liquors upon the said Land hereby demised, or any part thereof. And further that the said

shall not, nor shall any Person or Persons, deriving Title by, from or under him at any time or times during the first Years of the said Term Underlet, Assign, or otherwise Alienate or Dispose of the Land hereby demised, or any Part thereof, for all or any Part of the said Term, without the Consent in Writing of the said first Parties to these Presents, or their Assigns, or the Heirs, or Assigns, of the said deceased Thomas Earl of Selkirk, in that behalf first had and obtained.

And it is hereby lastly agreed by and between the said Parties to these Presents, that if the said Executors, Administrators, Assigns, or other Person or Persons deriving Title by, from, through, or under him, them, or any of them, shall not register, or cause these Presents, and also every subsequent Conveyance, Assignment, or Lease of the hereby demised Premises, or of any Part thereof, to be registered in the Register of the said Colony, kept at on the Banks of Red River aforesaid,

in the register of the colony to be kept at Fort Douglas." As has been seen in a prior part of this chapter it was impossible then to comply with that clause as the colony

or where the said Register of the said Colony shall be kept at the time, or shall not well and truly observe, perform, fulfil, and keep all and every the Conditions and Agreements hereinbefore contained, then and in such case the said first Parties to these Presents, or their Assigns, or the Heirs or Assigns of the said deceased Thomas Earl of Selkirk, shall or may Enter upon any Part of the Land hereby demised and from and after such Entry made the said Term of One Thousand Years, and these Presents shall cease and be void. In Witness whereof, the said Parties to these Presents have hereunto set their Hands and Seals, the Day and Year first above written.

Signed, Sealed, and Delivered in the Presence of

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SCHEDULE No. 1.

AN ABSTRACT of the several Conditions expressed in a certain Grant or Feoffment, wherein THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY gave, granted, enfeoffed, and confirmed to THOMAS EARL OF SELKIRK certain Lands, situated within the Boundaries of the Plantation or Colony in North America, called Rupert's Land, which was granted to the said Company by Royal Charter in the Reign of Charles II.

First, That the said Earl of Selkirk, his Heirs, or Assigns, or any other Person or Persons deriving Title by, from, through, or under him, them, or any of them, shall not, nor will, at any time or times hereafter, in or by any direct or indirect, mediate or immediate manner, ways or means, infringe or violate, or set about or attempt to infringe or violate, or aid, assist, or abet, or set about, or attempt to aid, assist, or abet, or supply with Spirituous Liquors, Trading Goods, Provisions, or other Necessaries, any Persons or Person whomsoever, corporate or incorporate, or any Prince, Power, Potentate, or State whatsoever, who shall infringe, or violate, or who shall set about, or attempt to infringe or violate the exclusive Right, Powers, Privileges, and Immunities of Commerce, Trade, and Traffic, or all, or any other of the exclusive Rights, Powers, Privileges, and Immunities of or belonging, or in anywise appertaining to, or held, used, or enjoyed, by the said Governor and Company, and their Successors, and particularly such Rights, Powers, Privileges, and Immunities as they are entitled to under, or by virtue of, or which were given and granted, or intended to be granted to them, or their Successors.

register was not opened till 1825. Still the wise attempt to provide for a thorough system of registration is remarkable and it is to be regretted that it was never carried out

by the Charter of his late Majesty King Charles the Second, bearing date on or about the 2nd Day of May, in the Year 1669, (save and except such Rights, Powers, Privileges, Immunities, and Franchises, as are incident to the Land thereby granted, or any Part or Parcel of the same,) without the License or Consent of the Governor of the said Company, and their Successors for the time being, for that purpose first had and obtained.

Secondly, That the said Earl of Selkirk, his Heirs, or Assigns, or any Person deriving Title by, from, through, or under him, them or any of them, shall not in any manner, without such License or Consent as aforesaid, carry on, or establish, or attempt to carry on or establish, in any Parts of North America, any Trade, or Traffic, in, or relating to any kind of Furs or Peltry, or in any manner directly or indirectly aid, or abet any Person or Persons in carrying on such Trade or Traffic, or in any manner (otherwise than is thereafter mentioned) navigate, or traffic, or assist in navigating, or trafficking upon, or within any of the Seas or Waters within Hudson's streights aforesaid, or unlawfully enter into, or trespass upon any part of the Land or Territories belonging to the said Governor and Company, and their Successors, in or at Rupert's Land aforesaid, not thereby granted.

Thirdly, That the said Earl of Selkirk, his Heirs, and Assigns, and all and every the Person or Persons whomsoever, claiming or deriving Title by, from, through, or under him, them, or any of them, as Leesees, or Leesees, or otherwise, shall, and may convey any Produce of Rupert's Land aforesaid, save and except the Furs and Skins of Beavers, and other Animals of a wild and untamed nature) to Port Nelson, in Hudson's Bay, and to commit, send, and consign the same to the Port of London, to be deposited and Lodged in the Warehouses belonging to, or to be from time to time appointed by the said Governor and Company, and their Successors; and in like manner to import, bring, and convey into the said Land and Territories, called Rupert's Land, any Goods, Wares, Merchandise, or Commodities of any Kind, Nature, or Description whatsoever, as well manufactured as unmanufactured, for the Use, Convenience, and Consumption of the Persons being or residing within the limits of the Lands thereby granted, and to sell, barter, and exchange, or otherwise dispose of the same, at his and their Will or Pleasure.

Fourthly, That the said Produce, Goods, Wares, Merchandise, and Commodities, shall be conveyed to and from Port Nelson in Ships or

in its entirety. The colony register itself has disappeared, overtaken, doubtless, by the mysterious fate which has befallen nearly all the public records of Assiniboia. No

Vessels, to be from time to time provided by the said Governor and Company, and their Successors, in pursuance of the Agreement in that behalf thereafter mentioned.

Fifthly, That the said Governor and Company and their Successors, shall and may claim and shall be paid and allowed by the Owner or Proprietor, or Owners or Proprietors of the said Produce, Goods, Wares, Merchandises, and Commodities, or Charges as and for and in the nature of Quayage, Wharfage, Warehouse Room, and Commission for Sale, which shall be, or constitute the Average or ordinary Price or Prices in similar cases, together with such Charge for Freightage as shall at the time or respective times be paid, or payable for Vessels navigating between the Ports of London and Quebec, or at or for such rates of Freight as Vessels can or may be chartered between London and Hudson's Bay, and the said Governor and Company shall and may also charge, and shall be paid and allowed for the License thereby given and granted to and for the purposes therein after mentioned as in the nature of a Custom or Duty, any Sum not exceeding £.5 for and upon every £.100 in Value or amount of the Produce, Goods, Wares, Merchandise, and Commodities, which shall or may be conveyed to or from Port Nelson aforesaid, and so in proportion for less Quantity in Value or in Amount than £.100, unless the same kind of Produce, Goods, Wares, Merchandise, and Commodities, shall be subject to a higher Rate of Duty or Importation at Quebec, and then in cases of Importation the said Governor and Company, and their Successors, shall and may charge, and shall be paid and allowed at and after the same Rate as shall be paid or payable at Quebec, such Value or Amount to be from time to time fixed and ascertained in all cases of Imports by and upon the actual and *bona fide* Invoice Prices, and in all Cases of Exports by the Net Proceeds of Sales at London.

SCHEDULE, No. 2.

ABSTRACT of Orders and Regulations to be observed by Settlers, now and hereafter to be Settled on the Lands contained in the said Grant by the said Governor and Adventurers Trading into Hudson's Bay.

That the Settlers shall at proper Seasons in every Year, use their endeavours for making and Repairing the Public Roads and Highways, and shall be chargeable therewith, as followeth, that is to say, each Settler shall employ himself, his Servants, Horses, Cattle, Carts, and

more such leases, save one (*a*), have come to light and, apparently, as these are the only survivors, there could not have been many of them in existence. They are signed on behalf of the executors by R. P. Pelly, but a careful consideration of the power of attorney above given raises a doubt that he had the power to grant leases, and a like consideration of the will of Lord Selkirk (*b*) raises a similar doubt in regard to the executors themselves.

For the benefit of readers not versed in law it may be mentioned that a lease for any number of years is of no higher dignity than one for but one year, both are merely chattels and pass to the personal representatives of a decedent. Legislatures, however, as the editors of the American edition of Williams on Personal Property (*c*) observe, have in certain cases considered leases for long unexpired terms as being worthy of being converted into estates in fee, as for instance in Ohio and Massachusetts, and, as will be seen later, this was the course adopted by Canada on its acquisition of Rupert's Land.

Carriages, and other things necessary for the purpose, on every day, and every place, to be appointed by the Surveyor or Overseer, for making or amending the Public Roads or Highways, not exceeding at and after the rate of Six Days in every Year, to be computed from Michaelmas to Michaelmas.

That the Settlers shall use their endeavours for the Benefit and Support of the Clergyman, and shall be chargeable therewith as followeth, that is to say, each Settler shall employ himself, his Servants, Horses, Cattle, Carts, Carriages, and other things necessary for the purpose, on every day and at every place to be appointed by the Clergyman to whom or whose Communion he shall belong, not exceeding at and after the rate of Three Days in the Spring, and Three Days in the Autumn of each Year.

That the Settlers shall in the said manner use their endeavours for the defence and internal Peace of their Settlement, and shall be chargeable therewith according to the Laws and Regulations now in force in Canada and Nova Scotia, or such Laws and Regulations as shall from time to time be made by competent Authority.

(*a*) Among the Bulger Papers, *supra*.

(*b*) *Vide* appendix.

(*c*) Second Am. Ed., p. 48, *n*.

For the purpose of inquiring into the condition of the settlement one of Lord Selkirk's executors, Mr. John Halkett, visited Assiniboia in the summer of 1822. He was clothed with the most ample authority to settle all differences between the estate and the colonists, and the instructions furnished him, apparently by Mr. Andrew Colvile, are fortunately yet extant (*d*). These show conclusively that the lands were *sold* to the settlers, as appears by the following extract :

Price of Land :

Lots of 100 acres and not exceeding 500 at 9 sh. to actual settlers.									
Upwards of	500	"	"	"	1000	"	8 sh.	"	settle 2 families.
"	"	1000	"	"	"	2000	"	7 sh.	" " 3 "
"	"	2000	"	"	"	3000	"	6 sh.	" " 4 "
Lots of 5000		"					5 sh.	"	" 5 "
"	"	10,000	"				4 sh.	"	" 10 "

Payment to be made of one third down and the remainder in three years with interest, or if the whole is paid down, 20 per cent. discount. If these prices are found too high, a discount of 30 or 33 $\frac{1}{3}$ per cent. may be given for prompt payment, but Mr. Halkett will, from the information which he has received, be able to correct this scale if too high.

The Swiss settlers also, as may be seen by reference to the "Terms" given at length in the appendix, purchased their land "free from all rent or annual payment" in lots of not less than 100, nor more than 500 acres for each family at 9 sh. per acre; one third cash before being put into possession, the balance in 3 equal annual instalments with five per cent. interest; if they paid the whole price before embarking from Rotterdam a deduction of 20 per cent. was allowed. Those who "preferred" paying an annual rent, in specified bushels of wheat, on "leases for ever" could do so, as provided in the "Terms."

Fortunately some of the agreements made between Governor Bulger and these Swiss settlers have been preserved. Three of them are to be found among his papers (*e*)

(*d*) Bulger Papers, *supra*, vol. 2, p. 30.

(*e*) Vol. 2, pp. 257, 60 and 261.

already mentioned. They all bear the same date, August 21, 1822, and the grantees are Christian Rickner, Nicholas Hauffman and Sigismond Flotron. Here is Hauffman's agreement, which serves as an example of the others :

It is hereby agreed between Andrew Bulger on the part of the executors of the late Earl of Selkirk, and Nicholas Hauffman, Swiss Colonist, that the latter shall be put into possession of the house and land lately occupied by Louis Lapierre, Senior, that for the house he shall pay to the said executors the sum of sixteen pounds sterling, and shall hold the land upon the conditions contained in Mr. Halkett's "Memorandum of the 20th July, 1822," which is deposited in the colony office.

Signed at Fort Douglas, Red River settlement the twenty-first of August, 1822.

(Signed) Andrew Bulger.

(Signed) Nicholas Hauffman.

The original delivered to Nicholas Hauffman.

(Signed) A. Bulger.

The conditions of Mr. Halkett's memorandum (*f*) of 20th July, 1822, are as follows :

An application having been made on the part of several of the Red River settlers married to women who lately came from Europe and the price of whose passage to America had not been yet paid, but appears now charged against their respective husbands in the colony books, it appears to Mr. Halkett, under all the various distressing circumstances attending this settlement, that these debts so standing in these books, should be cancelled, and he will suggest to Lord Selkirk's executors in England the propriety of confirming this decision. These as stated in a list laid before me appear to amount to the sum of one hundred and sixty-nine pounds and one shilling, in which one year's interest is included.

(Sd) J. Halkett.

Forks Red River, July 20th, 1822.

The relation between this memorandum and the conditions upon which the grantees were to hold their lands is not at first sight apparent; but it is evident from sixteen pounds having been paid that the title acquired was a fee and not a leasehold ; the sum was too large to be for rent even if rent were payable in cash, which it was

not, but, as has been seen, in produce, wheat; apparently Hauffman had married one of the "women from Europe" whose passage remained unpaid, and unless the executors adopted Mr. Halkett's suggestion to free him from this debt it would be charged against his lands in the books of the colony.

In September, 1822, after the departure of Mr. Halkett from Red River, the Rev. Th. Destroismaisons of St. Boniface, on behalf of Bishop Provencher, addressed to Governor Bulger a series of nine questions regarding the tenure of lands at Red River under Lord Selkirk and more particularly the rights of the Roman Catholic church in regard to its possessions. There appeared to be a desire on the part of the Bishop to introduce, so far as the Canadians and half-breeds were concerned, the Lower Canadian Seignorial system. The second question, in fact, asks "Would there be any objection to our conceding lands, upon the River Seine, at a fixed rent, not redeemable, with the rights of "*lods et ventes*" as the Seigneurs concede in Canada?" The governor, writing (g) from Fort Douglas on the 10th of the same month, was very emphatic in his reply to the effect that any one, not under an engagement to take land from the Earl, might purchase or rent land from the Roman Catholic Mission, but the right of exacting "*lods et ventes*" was not recognized and would "never be permitted to be exercised within the Territory granted by the Hudson's Bay Company to the Earl of Selkirk."

Further evidences of grants in fee by this Governor are not wanting. Thus, following out the intention of the late Earl, the colony interpreter, Charles Gaspard Bruce, received (h) lot 158 according to the official plan, "free of

(g) Bulger Papers, *supra*, vol. 2, p. 315. *Vide* appendix for the full text of this very interesting communication.

(h) This quaint conveyance is as follows—Bulger Papers, vol. 3 p. 315;

price or rent," so also Joseph Watt on June 1, 1823, lots 154 and 155 at five shillings per acre, and Michael Gatien (i) lot No. 153 at the same rate.

As a result of the evidence, documentary and otherwise, adduced during the course of this chapter, it is hoped that it has sufficiently appeared :

1. That in the very great majority of cases the estates

Having reason to believe that it was the intention of the late Earl of Selkirk, to grant to Charles Gaspard Bruce, interpreter of the Sauteux Nation the lot of land originally marked off for the interpreter of the colony ; and being quite certain that it will be of material and permanent advantage to the colony to put him in full possession of that lot, I do hereby in the name of the executors of the said late Earl of Selkirk promise to the said Charles Gaspard Bruce, that he shall possess and enjoy the said lot of land free of price or rent, but subject to all the other conditions imposed upon settlers in Red River ; the said lot of land numbered 158 on the plan containing eleven English statute acres, and bounded on the north by the land of Michael Bousquet ; on the east by the road communicating with German Creek ; on the south by the land of Michael Scheller ; and on the west by the Red River.

Signed in duplicate at Fort Douglas, Red River Settlement, this first day of June, 1823.

A. Bulger.

(i) Gatien's conveyance is here given by way of example :

Fort Douglas Red River Settlement, July 30th, 1823.

It is agreed between Andrew Bulger on the behalf of the executors of Thomas late Earl of Selkirk, and Michael Gatien of Red River, that the said Michael Gatien shall be put in possession of a lot of land, numbered on the map 153, and measuring ten English statute acres bounded on the north by the land of Peter Kandrosky, on the east by the road communicating with the German creek, on the south by the land of Michael Bousquet, and on the west by Red River, and that the said Michael Gatien shall pay in the course of this present summer for the said land at the rate of five shillings sterling per acre.

Signed in duplicate at Fort Douglas Red River settlement this 30th September, 1823.

(Signed) Michael Gatien.

(Signed) Andrew Bulger.

In presence of

(Signed) Wm. Kemp.

(Signed) Henry Eustace.

derived by the Selkirk colonists were not estates of leasehold, but freehold ;

2. That in the numerous cases of retired servants of the Hudson's Bay Company who were allotted lands in Assiniboia by Lord Selkirk, under their agreements and the reservations in the Company's grant to him, a freehold may be assumed ; and

3. That in no case is there an assumption in favour of a leasehold.

As to the nature of the estates granted by the Company when it took over Assiniboia from Lord Selkirk's executors, this will be considered in the next chapter.

CHAPTER IV.

OF THE ESTATES GRANTED BY THE HUDSON'S BAY COMPANY IN
ASSINIBOIA, AND THE RECOGNITION BY THE COMPANY AND
CANADA OF THE CLAIMS OF LORD SELKIRK'S SETTLERS.

The common belief, already referred to on page 21, that the Hudson's Bay Company granted only leaseholds in Assiniboia, took its rise, doubtless, in the evidence given by certain officers of that Company before the Select Committee of the House of Commons in 1857. Sir George Simpson there stated (*j*) that the tenure of land was for 999 years and that it was by recommendation of counsel that leases were granted. The form of "land deed" handed in to the Committee by Sir George, a lease for 1,000 years, will be found at page 361 of the report. He testified (*k*) further that the settlers were satisfied for the most part to hold their lands without a deed, that if they asked for a deed they received one in the form mentioned, that it was a very unusual thing for a settler to ask for one, in fact nineteen-twentieths of the people had no title, "they squat and set themselves down" on unoccupied land unmolested by the Company, only if they did come for a deed they were required to pay for the land; the restrictive clauses were never made use of by the Company to restrain settlement at Red River.

Mr. Alexander Kennedy Isbister stated (*l*) that he believed himself to be, as heir of his father, the owner and not the lessee under the Company of certain lands, but as appears from a document he handed in as being of the same nature as his own he was simply a lessee for a 1,000

(*j*) Questions Nos. 1093, 1161 *et seq.*

(*k*) Questions 1860-1874.

(*l*) Question 2505 *et seq.*, and appendix at p. 371.

years ; so was also John Slater, who had a lease (m) for a similar term.

Lt. Col. Caldwell, for seven years Governor of Assiniboia, limited the application of Sir George Simpson's statements as to the squatting, saying (n) this took place mainly "further up the Assiniboine" and that latterly the Company was more stringent in its regulations, requiring a certain amount of money to be paid before people were let into possession of land. That the council of Assiniboia recognized the right of casual occupiers appears from its minutes of the 27th February, 1860, on which day it was provided "that in difficulties arising between persons who "take land outside of the part of the colony already surveyed, or even that exceeding the limits of the colony, "the magistrates be authorized to take for the principle "that 12 chains shall be the limit of pre-emption right "arising from occupation." Where, however, the Company had made a grant of lands they were careful to see that their grantee was protected. An instance of the kind may be found in an interesting case of *Carriere v Dagnon* (o), tried at the Upper District Local Court, at Fort Garry, in 1860. The plaintiff was allotted the land in July, 1860, and had his name entered therefor in the register. He found the defendant cutting hay thereon, a right which he claimed to have exercised for 12 or 13 years, but without a licence from the Company. The plaintiff bringing an action for the trespass, Dagnon sought to justify on the ground that the land on the River Seine was outside the two mile limit of the tract granted by the Indians to Lord Selkirk along the Red River. The court found for the plaintiff, remarking that though in general the Company

(m) *Ibid* p. 439.

(n) *Ibid*, questions 5568 *et seq.*

(o) A report of this case may be found under date of Aug. 28, 1860, in the *Nor'-Wester*, published at Fort Garry.

disposed only of land within the two mile limit (the extent of the survey) yet in the present case the land lay within that limit as by that treaty a circuit of six miles was ceded around Fort Douglas; the court did not admit, apparently, the necessity of any grant from the Indians.

In a case (*p*) brought some years before, that of *McDermott v Fanyant et al.*, the General Quarterly Court decided on February 18, 1847, a similar question where the power of the Company to confer a valid title to lot No. 1092 was expressly raised. One of the defendants, against whom an action for wrongfully cutting wood had been brought, raised, apparently in good faith, what now appears an almost farcical defence. The Indians, he contended, had only granted to Lord Selkirk the land just above mentioned, not the wood thereon, and, as a half-breed, he considered himself, in common with others of his race, as succeeding to their rights in the premises. This defence of course could not be entertained and "the register of lands granted in Red River settlement by the Hudson's Bay Company was then produced and sworn to by Mr. Governor Christie, and on reference to the lot it appeared that it had been granted to the plaintiff. There was also produced the indenture between the native chiefs and the Earl of Selkirk, to whose rights in the premises the Hudson's Bay Company had succeeded, and on reference to the terms of the deed it clearly appeared that the plaintiff's lot was comprehended within the limits of the district or country sold by the native chiefs to the Earl of Selkirk," and a verdict was rendered in favour of the plaintiff.

Sir George Simpson did not expressly say that leaseholds only were granted by the Company in Assiniboia, yet the tenour of his evidence was to that effect, but, as has

been seen, Sir George's statements before the Committee were very often so erroneous that but little weight can be attached to what he said even if it were apparent, which it is not, that he was aware of the fact that the Company's predecessor had extensively granted freeholds. More recently his statement regarding leaseholds has apparently received confirmation by the late J. H. McTavish, accountant of the Company at Fort Garry from 1860 to 1870, who, though he did not know what titles Lord Selkirk granted, yet stated in 1883 (*q*) that, irrespective of receipts for money, "the only documents the Company ever gave were leases; usually for 999 years with payment of 3 peppercorns annually." He had made a search, he said, for a form of such lease but could not get one, nor could he remember any particular instance in which one had been given; as nine-tenths of the people were satisfied with an entry in the register simply, nothing was said about any document whatever or the nature of the tenure, but if they should ask for a "deed" such a lease as above mentioned would be given.

Now, while Mr. McTavish speaking of the period with which he was familiar was doubtless correct as to the statements contained in the latter part of the preceding paragraph, yet when he said that only leases were ever granted he was not more correct in that assertion than when, after saying that the register was in the handwriting of Nathaniel Logan, he stated that it was compiled between the years 1860 and 1865, the fact being that Mr. Logan died on the first day of January, 1858. Mr. John Balsillie, who was long in the service of the Company and as familiar as Mr. McTavish with the register, assures

(*q*) Evidence, from notes of the court reporter, Mr. Wm. Perkins, given in the case of *Keating v. Moyses*, tried at Winnipeg, before the Queen's Bench on June 23, 1883.

There was no such office as "land registrar" of the Company; the register was in the custody of the accountant at Fort Garry.

the writer that, from internal evidence, he is satisfied it was compiled at least as early as 1851 and probably several years before that date.

The easiest refutation of Mr. McTavish's assertion will be found in a letter written on November 24, 1888, by the late Land Commissioner of the Company to the Dominion Lands Commissioner at Winnipeg. In it he (Mr. C. J. Brydges) says :

About the old forms of lease; I cannot find any trace in this office of any printed document of any sort, but in what I call the Company's "Old Family Bible," (a copy of which the Department of Interior has) I find 3 or 4 copies of a form of *agreement for sale* of land, full of blanks. *This is evidently a form which was in use at some time and a lot I suppose were kept on hand ready to be filled in.* I send you one copy. It has the appearance of having been drawn and written out in England.

That the Commissioner was quite justified in his assumption that this form of agreement had been used will appear from one of those very agreements signed, filled in, and bearing date November 5, 1861, whereby the Company agreed to sell to Michel Dumas, for 36*l*, lot 927 according to the official survey of the settlement and, on payment of the purchase money, execute in his favour, or as he might direct, "an absolute grant and conveyance in fee simple" of the lot mentioned. A copy of this agreement is given in the note (r) not merely because it destroys the theory of leaseholds only being granted, but because it also furnishes such a remarkable confirmation of Mr. Brydges' belief.

(r) ARTICLES OF AGREEMENT made the fifth day of November, one thousand eight hundred and sixty one, between the GOVERNOR and COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY of the one part and MICHEL DUMAS, of Red River Settlement, of the other part.

WHEREBY the said GOVERNOR and COMPANY agree to sell and the said MICHEL DUMAS agrees to purchase at or for the price or sum of thirty-six pounds, to be paid by the instalments following, that is to say :—Six pounds in cash on the signing of this Agreement, six pounds on the first day of November, 1862, six pounds on the first day of December, 1864, etc., etc., etc.,

Though Mr. McTavish had heard of no document other than a lease or receipt for money, yet that others did exist will further appear from the following certificate (s) granted by Chief Factor Finlayson. The words in italics are filled in by a hand different from that which wrote the blank.

25 Acres of this Lot already paid by T. Swain.
50 Acres of this Lot to be paid by And. Fidler.
25 " of this Do. to be paid by P. Broune.

100 Acres.

LOT 1279.

These are to certify that *Peter Brown* has been put in possession of *six chains* frontage of *100 acres* of land on the *North* side of the *Assiniboine* river *above* the Forks and that a formal deed will be given him for the same after the survey of the Settlement shall have been completed.

(Sd) *Dun Finlayson, C. F.*

Forks Red River Settlement,
28th February, 1842.

This cancels all the other certificates heretofore given for land.

No inference in favour of a lease can be drawn from such a document and the holder would undoubtedly derive rights the same as those enjoyed by Lord Selkirk's settlers who held exactly similar certificates which have been considered in the preceding chapter.

ALL that piece or parcel of land being the whole of lot No. 927 as described at large in the Official Survey of the Red River Settlement and containing ninety-six English acres or thereabouts, and more particularly described in the plan thereunto annexed being a tracing from the said Official Survey, and the said GOVERNOR and COMPANY further agree that upon full payments by the said MICHAEL DUMAS, of the said sum of thirty-six pounds, by the instalments above mentioned, the said Governor and Company will execute in favour of the said MICHAEL DUMAS, or as he may direct, an absolute grant and conveyance in fee simple of the piece or parcel of land above described, subject to such laws and regulations as may be from time to time established for the good Government of the Colony. [Original in possession of Mr. Jas. Taylor of Prince Albert, N.W.T.]

(s) Original in possession of Mr. W. J. Robinson, of Winnipeg.

Fortunately we are able to produce a copy of that form of lease granted by the Company which the gentlemen before mentioned failed to find any trace of (*t*). After an examination of several which, as the result of a protracted search, have, by the assistance of friends, come into

(*t*) THIS INDENTURE made the *seventh* day of *March* in the Year of our Lord One Thousand Eight Hundred and Fifty *Nine* between the Governor and Company of Adventurers of England, trading into Hudson's Bay of the one Part and *John Bruce*, of *Red River Settlement*, of the other Part.

WHEREAS the said *John Bruce* is desirous of becoming a Settler upon the Land hereinafter described or intended so to be, being certain Part of a Territory in North America, belonging to the said Governor and Company, and held under the Crown by Charter. NOW THEREFORE, THIS INDENTURE WITNESSETH, that in consideration of *the purchase of the same by Alexander Wintzel from Thomas late Lord Selkirk, and the said Alexander Wintzel having transferred all his right and title therein unto Louis Goulet who hath again transferred the same to Louis Morin who hath transferred the same to the said John Bruce*.....

and in consideration also of the Covenants hereinafter contained on the part of the said *John Bruce* they, the said Governor and Company, do hereby Grant, Demise, and Lease unto the said *John Bruce*, his Executors, Administrators, and Assigns, ALL THAT Piece or Parcel of Land, being *the whole of Lot No. 260, as described at large in the Official Survey of Red River Settlement, and containing, more or less, forty-five English Acres, being Parallel lines running from the West Bank of the Red River, S 62 West, One Hundred and Fifty English Chains or thereby with three Chains frontage*..... with the necessary appurtenances thereto, TO HAVE HAD TO HOLD the said Piece or Parcel of land hereby demised or intended so to be, and every part thereof with the appurtenances unto the said *John Bruce*, his Executors, Administrators, and Assigns, from the Day next before the Day of the Date of these Presents, and for and during and unto the full term of One Thousand Years, thence next ensuing; Yielding and paying therefor Yearly and every Year, during the said Term, and upon the Michaelmas Day in each Year, the Rent or Sum of One Pepper-corn, the first Payment whereof to be made upon the Twenty-ninth Day of September next

Lot No. 260

(Sd) JOHN BRUCE.

Registered Book No. B

Fol. 54.

I, John Bruce, hereby make over to James Mulligan all my right title and interest in the within mentioned No. 260.

Fort Garry, 7 Decr. 1868.

J. H. McTavish, (Witness.)

J. J. Hargrave, (Witness.)

the writer's possession, the one given at length in the note has been selected as the most remarkable example extant. In the first place, while reciting a *purchase* of the land by Alexander Wintzel from Lord Selkirk, Wintzel's conveyance to Goulet, Goulet's conveyance to Morin, and Morin's to Bruce, it proceeds to curtail

ensuing the Date hereof. AND the said *John Bruce*, for himself, his Heirs, Executors, and Administrators, doth hereby covenant and agree with the said Governor and Company, in manner following, that is to say, That he the said *John Bruce* shall or will settle and establish himself or themselves and continue to reside upon the said hereby demised Land, and shall or will within Five Years from the Date of these Presents, bring, or cause or procure to be brought into a State of Cultivation One Tenth Part of the said hereby demised Land, and thenceforth continue the same in such state. AND that, during the said term, he the said *John Bruce*, his Executors, Administrators, and Assigns shall not, directly or indirectly, mediately or immediately, violate or evade any of the chartered or licensed privileges of the said Governor and Company, or any restrictions on trading or dealing with Indians or others, which have been, or may be, imposed by the said Governor and Company or by any other competent authority, or in any way enable any Person or Persons to violate or evade, or to persevere in violating or evading the same, and in short shall obey all such Laws and Regulations, as within the said Settlement now are, or hereafter may be, in force, for preventing the Distillation of Spirits, for preserving Internal Peace, for repelling foreign aggression, for making and repairing Roads and Bridges, and for encouraging and promoting general Education and Religious Instruction. AND that he the said *John Bruce*, his Executors, Administrators, or Assigns, shall or will from time to time, and at all times during the said Term, contribute in a due proportion to the Expenses of all such Public Establishments as by the said Governor and Company, or by the Governor and Council of Assiniboia, may be deemed necessary. AND also that he the said *John Bruce*, his Executors, Administrators, and Assigns shall not, nor will, without the license or consent of the said Governor and Company for that purpose first obtained, carry on or establish, or attempt to carry on or establish in any Parts of North America subject to the Jurisdiction of the said Governor and Company, any Trade or Traffic in or relating to any kind of Furs, nor in any manner directly or indirectly aid or abet any Person or Persons in carrying on such Trade or Traffic; nor shall nor will at any time or times during the said Term Distil, or cause or procure to be Distilled, Spirituous Liquors of any Nature or Kind soever, either upon the Land hereby demised, or within any other Part of the Territories belonging to the

and limit this title by purchase, plainly a fee, to a leasehold, which is all that it grants to Bruce ! Bruce, then having in the meantime learned to write, by indorsement conveys to Mulligan and the latter covenants to "assume all the responsibility" of a mortgage of the *land*, not of the *term*, which the former has executed in favour of the Company though the Company does not appear to have any claim at all on the land ; if it had, it must have been for some portion of the original purchase money due to Lord Selkirk's estate, to the benefit of which balance it was en-

said Governor and Company in North America, nor during the said Term, knowingly suffer or permit any other Person or Persons whomsoever, to Distil any such Liquors upon the said demised Land or any Part thereof. AND ALSO that he the said *John Bruce*, his Executors, Administrators, or Assigns, shall or will, within Six Calendar Months from the date hereof, as to these Presents, and within Six Calendar Months, from the date of each respective Assignment or Under-lease, to be made under or through these Presents, and with respect to each such Assignment and Under-lease respectively, cause these Presents and every such Assignment or Under-lease, when made, to be Registered in the Register of the said Territories in North America, or of the District in which the said hereby demised Land shall be situate, and wherever such Register shall be kept at the time. PROVIDED ALWAYS, nevertheless, and it is hereby declared and agreed, that if the said *John Bruce*, his Executors, Administrators, or Assigns, shall not in all things well and truly observe and perform all and every the Covenants and Agreements herein contained on his and their behalf to be observed and performed, Then, and in either of such cases, and either upon or after the first breach, or any subsequent breach or breaches of Covenant, and as to any subsequent breach or breaches, notwithstanding there may have been any Waiver or Waivers, or supposed Waiver or Waivers thereof, by the acceptance of Rent or otherwise, it shall or may be lawful to and for the said Governor and Company, and their Successors or Assigns to enter into and upon the said hereby demised Premises, or any part thereof, in the name of the whole thereof, and to have, hold, retain, and enjoy the same as in their former state, and also to put an end to, and determine the said term of One Thousand Years, or as much thereof as shall be then unexpired, and all and every Person or Persons then occupying the same Premises, or claiming Title thereto, to put out and amove any thing hereinbefore contained to the contrary notwithstanding. IN WITNESS whereof, the said Parties to these Presents have hereunto set

titled on paying off his executors and taking over the colony. Altogether it would be difficult to imagine a more peculiar legal document.

In the third chapter the various classes of persons, five in all, who were entitled to grants of land in Assiniboia under Lord Selkirk, have been enumerated. It is now opportune to mention a sixth and final class which came

their Hands and Seals, the Day and Year first above written, at Red River Settlement aforesaid.

Three words [skins—or—peltry] delete are null.

(Sd.) JOHN ^{his} X BRUCE.
mark.

Signed, Sealed, and Delivered,
in the Presence of

(Sd.) J. FORTESCUE,
Clerk Hudson's Bay Co.

(Sd.) W. MACTAVISH,
Hon. Hudson's Bay Company.

(Sd.) S. G. JONES,
Clerk Hudson's Bay Co.

[SEAL] { H.B.C }

[The following "mortgage" is written on the back:]

This writing by way of mortgage, made this Seventh day of March One Thousand Eight Hundred and fifty-nine, between the Governor and Company of Adventurers of England trading into Hudson's Bay of the one part, and John Bruce of Red River Settlement of the other part Witnesseth,—— That Whereas on a certain lot of land No. 262 lately in possession of the said John Bruce but this date by him granted and transferred unto James Mulligan there remains due and owing unto the said Governor and Company the sum of Four Pounds—Seventeen Shillings and Six Pence sterling—and Whereas the said John Bruce hath become bound and by these presents doth become bound unto the said Governor and Company and to the said James Mulligan for the payment of the same, Now therefore he the said John Bruce doth hereby specially mortgage all the within named part or parcel of land together with the appurtenances thereof to and in the favour of the said Governor and Company for the satisfaction of the said sum of Four Pounds Seventeen Shillings and Six Pence sterling so remaining due and owing as aforesaid by privilege and preference to all other claims and incumbrances whatso-

to Red River under the auspices of the Company. In 1848, several companies of the 6th Regiment of Foot, a detachment of engineers, and of artillery, numbering eighteen officers and three hundred and twenty-nine men, that had been sent in 1846 for the protection and defence of the colony when trouble was anticipated with the United States Government over the Oregon dispute, were recalled, and replaced in the autumn of the same year by a body of out-pensioners of Chelsea Hospital. According to Ross (*u*), these latter came out in two squads of some seventy each, the second of which arrived in 1850, and were under the command of Major, afterwards Lieut.-Colonel William Caldwell, who also filled the office of Governor of Assiniboia. Hargrave (*v*) places the number at only 56 men, and says nothing about a second detachment. He mentions that the term of enrolment was seven years, that each sergeant was promised a free grant of 40 acres of land, each corporal 30 acres, and each private 20 acres; but on their arrival it was discovered that there

ever and to all other persons whomsoever. Done at Fort Garry, on the date above written.

Signed, Sealed and Delivered	his
in the presence of	(Sd.) JOHN X BRUCE.
(Sd.) J. FORTESCUE	mark.
Clerk Hudson's Bay Co.	I, James Mulligan, hereby assume all
(Sd.) S. G. JONES	the responsibility of paying to the H. B. Co.
Clerk Hudson's Bay Co.	the £4, 17s, 6d, entered into by John Bruce
FORT GARRY,	in the above mortgage and renew the
7 Dec'r. 1868.	mortgage of the Lot No. 260, this day
(Sd.) J. H. McTAVISH, Witness.	transferred to me by John Bruce.
(Sd.) J. J. HARGRAVE, Witness.	(Sd.) J. MULLIGAN.

It may almost be assumed that the Alexander Wintzel, or Wentzel, mentioned in above lease was that Alexander Wentzel of Red River Settlement, only son of the well-known Norwegian fur-trader, Willard Ferdinand Wentzel, referred to by M. Masson, in the first volume of his *Bourgeois de la Compagnie du Nord-Ouest*.

(*u*) P. 365.

(*v*) P. 93.

was not enough land within the prescribed limits (which he does not define), so arrangements were made whereby sums of money were substituted for the land grants.

Lieut.-Colonel Caldwell, in his evidence before the Parliamentary Committee of the House of Commons (*w*), explains the probable difference between the estimates of Ross and Hargrave. He was sent out by the Government in command of the pensioner corps, and left Gravesend in June, 1848, bearing with him also a commission from the Company as Governor of Assiniboia, and relieved the troops on his arrival at Red River. His corps consisted of 56 men, non-commissioned officers and privates, 14 single men, all the rest married, with smaller or larger families; they were of English, Irish, and Scotch extraction, enrolled pensioners, who went out partly as settlers and partly as troops, the supposition being that they would remain and settle in the country. They were by no means satisfied with the arrangements which were made for them, as the accommodation was very insufficient, but, above all, the agreement for grants of land which, under their printed conditions, were to be made within two miles of Fort Garry, could not be performed, as it was found impossible to carry out this promise, there being an insufficient quantity to make the allotments within that radius. The Company had entered into the agreement in ignorance of the extent of its reserve. This gave rise, naturally, to discontent, which was, however, allayed in June of the following year, when Sir Geo. Simpson came "and, by offering them a sum of money in lieu of the land, pacified them. They were eager to get the money, for they were dissatisfied with the country altogether, being so far away from the civilized part of the world."

Governor Caldwell stayed till 1855. At that time, many of the pensioners had gone away, some to Canada, and a

(*w*) Report, 1857; §§ 5358-5563.

few to England; 25 families remained at the date of his departure in 1855. At the time of giving his evidence (1857), he described their numbers by saying, "a few of them are left." Strangely enough, he says nothing whatever of the second body mentioned by Ross, which, however, as appears by a "List of Pensioners" furnished the writer by the War Office, arrived at Fort Garry in 1850, and consisted of twenty men (x). Many interesting details of these pensioners have been obtained from George R. Turner, now of Winnipeg, who came to Fort Garry in the autumn of 1848, with his father (who had been a private in the Sappers and Miners), mother, and younger brother. He says that most of the men of the second draft were married and had families, which would bring the number of people who arrived that year in the colony up to the number of "about seventy," mentioned by Ross. This would get over any seeming discrepancy in his statement. The second draft was under the command of Captain Hill, who returned to England in 1854.

It will be noted that Lieut.-Colonel Caldwell, in his evidence, referred to certain "printed conditions," under which the pensioners were induced to come to Red River, the chief attraction in which was the promise of grants of land in certain proportions according to their several ranks. But Lieut.-Colonel Caldwell did not state whether the grant was to be a leasehold or a freehold, so it became, for the purposes of this work, of the first importance to procure a copy of these conditions, to see exactly what the terms were. After an arduous search of more than six months, and after exhausting every means of inquiry, the author was so fortunate as to obtain a copy, after a lengthy correspondence, from the War Office, in May, 1894; the value of the information thus obtained, however, more than compensated for the trouble. The full text of these "conditions on

(x) See Appendix K for a list of both drafts.

which it is proposed to enrol pensioners for service at Fort Garry, in the Territory of the Hudson's Bay Company, North America," will be found in Appendix I. They are of no little interest, but the only provisions necessary for the present purpose are those relative to the grants of land.

These grants were to be made on the following basis:—

Each pensioner will also be entitled to a temporary grant of land, not exceeding 20 acres to a private, 30 to a corporal, and 40 to a sergeant; the ground to be of a description fit for settlement, and within two miles of the Fort. On commencing the occupancy thereof, they will receive such an advance of money as may be found necessary for providing articles of furniture, cooking utensils, stock, etc., under the direction of their officer

* * * * *

On the termination of the seven years' service for which the enrolment is made, the land occupied by the pensioner will become his absolute property, provided he has fulfilled the conditions of his agreement; and he shall thereafter be subject to no further military duty than may be exacted from any other resident in defence of the settlement.

The Hudson's Bay Company are, however, to have the option, within one year of the termination of the service, of resuming possession of the land, on paying the pensioner the ascertained value thereof at the time, including the buildings and crop on the ground; or if the pensioner prefer it, he may receive a fresh grant, at a greater distance from the Fort, of treble the extent.

In the event of death before the termination of the seven years, the grant of land will devolve on the pensioner who may fill the vacancy; but should any improvements have been made thereon, the same shall be valued by his officer, and paid to his family out of a stoppage to be made from the pensioner succeeding thereto; and till the arrival of such pensioner, the family of the deceased shall be permitted to occupy the ground.

A subsequent clause provided that during the seven years' period of enrolment the pensioner would be subject to the provisions of the Mutiny Act and Articles of War, and might, in certain cases, be deprived of his residence and allotment; but once having served his time, no such forfeiture could operate.

The provision for resumption of the allotment by the Company within one year after termination of service was

a right of re-purchase, simply, within that period; the land was regarded, as a prior clause states, as the "absolute property" of the pensioner; this is fully shown by the fact that the Company was to pay the occupant not merely for his improvements but the "ascertained value thereof (the land), including the buildings and crop on the ground."

Here we have, then, yet another instance of grants of freehold by the Company.

These allotments were largely made in what is now the most desirable residence portion of the City of Winnipeg, and would be worth an immense sum of money. A good deal of misconception exists as to where these lots began, and the popular idea that they began west of what is known as Colony Creek, in the City of Winnipeg, is quite erroneous. It is shared, nevertheless, by the Dominion and Provincial Governments. Writing to the author, on January 10, 1894, the Secretary of the Department of Interior says: "The 'Plan of Farm Lots West of Colony Creek, City of Winnipeg,' made by Duncan Sinclair, D.L.S., dated August 5, 1874, shows the subdivision of No. 1211 of the Hudson's Bay Company's lots, but not the Pensioners' allotments. I may say to you, however, that so far as we have been able to identify the location of these allotments, from 35 to 54 are included within the boundaries of Lots 72 to 84, as shown on this plan. We never had any plan showing the Pensioners' allotments, all such claims having been dealt with by this Department, the same as any other grants of the Hudson's Bay Company. The first Pensioners' allotment west of Colony Creek appears to be 35, and as the lower allotments lie, some of them, outside of the Sinclair plan and west of the lots shown thereon, it would appear as if no allotments were made on the east side of Colony Creek. Anyway, we have nothing to show where allotment No. 1 was actually located." The officials of the Land Titles Office, Winnipeg, could throw no light on the subject, and had nothing before them to guide them in

arriving at any different conclusions from this erroneous one.

Before showing approximately where lot No. 1 really was, it should be pointed out that, as a matter of fact, the above-mentioned plan of Sinclair does *not* "show the subdivision of No. 1211 of the Hudson's Bay Company's lots," but only a small portion of it lying west of Colony Creek, and does not take in the main part of it lying east of the same; this is probably the cause of the misunderstanding which has arisen. Colony Creek is at least half a mile west of Fort Garry, and it is not reasonable to suppose that the Company, pressed for land to allot to the pensioners under the "Conditions," would begin to satisfy these persons out of land a long distance away when there was a very considerable quantity available almost up to the walls of the Fort. No. 1 must therefore be looked for where there is some probability of finding it, not where it is certain it would not have been. Fortunately, direct evidence is obtainable on the point. George R. Turner (*y*), above referred to, knew these pensioners intimately, and states that their lots were surveyed by William G. Smith, clerk of the Quarterly Court, and commenced some few chains west of Fort Garry, running originally from the Assiniboine River to the highway. Charles Stodgell, formerly a private of 29th Foot, occupied lot No. 1, he was placed on it in the autumn of 1848; the next lot belonged to John Eagan. Turner's father, George, had No. 11, but never built on it, as they had quarters at that time in the still standing portion of old Fort Garry—the wooden fort that preceded the one whose gate yet remains. Lot No. 1, the east side of it, would be about where the west side of Garry Street now is, and would take

(*y*) The author places much confidence in the testimony of this man, and justly so, for he found his lengthy evidence as to the pensioners, imparted in November, 1893, substantiated, in a most remarkable manner, even to small details, by official papers subsequently received from the War Office and other quarters.

in a portion of the premises now occupied by Captain Adams of the Hudson's Bay Company. Lot No. 11, Turner's lot, would be about where Carlton Street now is: Mr. W. F. Alloway's house, probably, stands on a portion of it. Lieut.-Colonel Caldwell received as his grant a great part of Armstrong's Point. No grants to pensioners were made further west than the Point, which was afterwards transferred to Captain Foss, who built a house and stables on it, and a small shooting-box at its extremity. Foss went to England about 1850, and Captain Hill got it. The pensioner who had the most westerly lot was Thomas Picksley, of the Marines; it did not front on the river, but on a road running across the neck of the Point. The lot next to him was not a pensioner's lot, but one of the regular lots of the Company's general survey, belonging to a half-breed named Joseph Robillard, and was three chains in width. Picksley returned to England about 1853. The accuracy of Turner's statement that Charles Stodgell occupied the first lot is put beyond all doubt by the fact that Mrs. John Gunn, of Gonor, Manitoba, who is connected with that family, substantiates his assertion of her personal knowledge. Some of the first draft had died or gone away before the arrival of the second in 1850; consequently the latter were allotted such of the holdings as were vacant. From the fact that the Department of Interior has satisfied itself that pensioners' lot No. 35 commenced west of Colony Creek, it is evident that Lots 1 to 34 were between that point and Fort Garry.

That Turner is also right in saying that Eagan was the owner of the second lot is proved by a document prepared by the Company on November 9, 1852, entitled, "Scheme showing subdivision of Lot No. 1211 (Point-a-Peltier(z)) amongst Fort Garry Enrolled Pensioners." A copy of this important document, given in full in Appendix M, may be

(z) Old name for Armstrong's Point.

seen at the Dominion Lands Commission, Winnipeg, though there are one or two slight errors in it as regards spelling of names. In that "Scheme," Stodgell's lot, No. 1, is shown as being then—1852—in the possession of the Company; it had probably reverted to it by forfeiture as provided in the "Conditions," and the same may be said of Turner's lot. It will be noticed that most of the lots were one and a half chains in width, in no case exceeding three, and ranging in size from two acres to twenty. This does not correspond with the original arrangement as called for by the "Conditions," which assigned twenty acres even to a private; but, possibly, they agreed to forego the balance in view of a payment in cash. Lieut.-Colonel Caldwell speaks of an adjustment having to be made, and it is not unreasonable to assume that it was made on some such basis.

It will be noticed that, at the date of the "Scheme," Picksley had two lots, 47 and 48, three chains in width, and containing twenty-eight acres. In all there were 54 lots; but there is nothing in that to clash with Turner's statement that Picksley's lay furthest west, for the others might have been between him and the river, on which, it will be remembered, his property did not front. The number of lots mentioned on the "Scheme" is only 54, and in the two drafts 76 men came out who were entitled to grants; but, as has been seen, between 1848 and 1850, several changes had taken place, and probably more in proportion within the time between the arrival of the second draft and the compilation of the "Scheme" in November, 1852. It is difficult, however, to understand why no mention at all is made of Lots 14, 18, 44, and 52.

From 1852 down to the present time there is no further written evidence in regard to the claims of the pensioners, or how they were dealt with by the Company. There is no map of any age showing how the allotments were laid out, though Mr. A. H. Witcher, formerly Dominion Land Agent at Winnipeg, and now of the Topographical Surveys Branch

of the Department of Interior, at Ottawa, has projected on one of the Department's maps a plan showing what he believes to be the boundaries of these allotments, and the relative positions of the lines of the surveys of the Company and Dominion Government. This plan was made up from what Mr. Whitcher speaks of as a "schedule of allotments giving dimensions of the lots, and names of grantees," is presumably the "Scheme" above referred to, and, in default of the production of Smith's original survey, it would not be safe to rely on it.

At the time of the Transfer to Canada, in 1870, a number of these pensioners, or their descendants, were in possession of their allotments, but, as the Secretary of the Department of the Interior says in his letter of January 10, 1894, "All such claims were dealt with by this Department the same as any other grants of the Hudson's Bay Company." This means that when the owners made application to the Department for Crown patent to their holdings, these latter were treated as leaseholds, whereas they were estates in fee. The effect of this grievous error will be considered later. The writer has been informed that the Company bought up, before the Transfer, certain of the pensioners' claims at 7*s.* 6*d.* an acre; no particular case, however, has been cited to him.

When the Company took over the colony from Lord Selkirk's executors in 1836, under the circumstances before detailed (*a*), there was no recognition in writing at that time of the claims of his lordship's settlers, or at least none that has come down to us. As a matter of law, it was not necessary that there should be such a recognition, for, the settlers having properly derived their estates from the earl, nothing that the Company could have done, assuming that they had been disposed to do anything, would have deprived the colonists of their estates.

(*a*) Pp. 14-20.

At a later date, however, recognition of such grants was forthcoming in the most formal manner possible. In the official "Red River Settlement Register, B," (b) now lying in the Company's vault at Winnipeg, full particulars will be found of the "Acres granted by Lord Selkirk," placed in a separate column, and carefully distinguished from the "Acres granted by Hon. H. B. Co.," which are entered in another column, so that there shall be no confusion. This of itself is a sufficient recognition, for every legal purpose, of the titles of the settlers prior to the Company's occupation, so it is unnecessary to give further illustrations to the same effect, which might be easily adduced.

Now as to the recognition by Canada of the titles of both earl and Company.

It has been seen (c) that No. 15 of the "terms and conditions" under which Canada acquired Rupert's Land was that "all titles to land up to the eighth day of March, 1869, conferred by the Company, are to be confirmed." There is no mention of titles conferred by Lord Selkirk, nor is it necessary that there should be, for the earl's title itself was "conferred by the Company," and this greater grant would include the lesser grants made by him under it.

The following provisions of the Manitoba Act, 33 Vic. cap. 3, assented to May 12, 1870, show the way in which Canada confirmed the titles of the Company :

Sec. 32. For the quieting of titles, and assuring to the settlers in the province the peaceable possession of the lands now held by them, it is enacted as follows :

1. All grants of land in freehold made by the Hudson's Bay Company up to the eighth day of March, in the year 1869, shall, if required by the owner, be confirmed by grant from the Crown.

2. All grants of estates less than freehold in land made by the Hudson's Bay Company up to the eighth day of March aforesaid shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

(b) Particulars of this and other registers will be found on a later page.

(c) Pp. 19, 20.

3. All titles by occupancy with the sanction and under the licence and authority of the Hudson's Bay Company up to the eighth day of March aforesaid, of land in that part of the province in which the Indian Title has been extinguished, shall, if required by the owner, be converted into an estate in freehold by grant from the Crown.

4. All persons in peaceable possession of tracts of land at the time of the transfer to Canada, in those parts of the province in which the Indian Title has not been extinguished, shall have the right of pre-emption of the same, on such terms and conditions as may be determined by Governor in Council.

5. The Lieutenant-Governor is hereby authorized, under regulations to be made from time to time by the Governor-General in Council, to make all such provisions for ascertaining and adjusting on fair and equitable terms, the rights of common, and rights of cutting hay held and enjoyed by the settlers in the province, and for the commutation of the same by grants of land from the Crown.

The scope of the third and fourth sub-sections was enlarged by 38 Vic. cap. 52 (1875), which repealed a similar enactment of the prior year, 37 Vic. cap. 20, as follows :—

3. Whereas it is expedient to afford facilities to parties claiming land under the third and fourth sub-sections of the thirty-second section of the Act thirty-third Victoria, chapter three, to obtain Letters Patent for the same :—

Be it enacted, that persons satisfactorily establishing occupancy of any lands within the province prior to, and being by themselves or their servants, tenants, or agents, or those through whom they claim, in actual peaceable possession thereof, on the fifteenth day of July, 1870, shall be entitled to receive Letters Patent therefor, granting the same absolutely to them respectively in fee simple.

Chapter 48 of the Revised Statutes of Canada embodies the results of these enactments; but there is a proviso in the third clause of the chapter to the effect that all claimants for letters patent for estates in fee by reason of "undisturbed occupancy," or "actual peaceable possession," must make application before May 1, 1886, otherwise their rights shall cease, and determine. This proviso is on the face of it illegal, but in any event neither the Department of the Interior nor the Dominion Lands Commission has ever attempted to enforce it, regarding it, properly, as a dead letter.

Sub-section 1 of section 32 expressly recognizes that there had been "grants of land in freehold" made by the Company, but for some reason this proper view was not acted upon. How it arose, unless from the expressions of Sir George Simpson and Mr. McTavish, who ought to have known better, it is impossible to say; but the fact remains, from whatever cause, that the Department of the Interior became imbued with the idea that all the estates granted by the Company were leaseholds, and, acting on this assumption, for years granted patents to the personal representatives of the deceased owner instead of to his heir-at-law, who, primogeniture being in force in Manitoba until the passing of the Intestacy Act on May 3, 1871, was solely entitled, save dower to the widow.

The Deputy Minister of the Interior, Mr. A. M. Burgess, was peculiarly wedded to this fallacy, and it was mainly owing to his misdirected exertions that this illegal policy was persisted in. In a letter written by him on January 4, 1888, to the Secretary of the Interior, he maintains that it was not the practice of the Company to grant other than leaseholds, therefore the lands, or rather the leasehold interest in them, must be dealt with by the Government as personalty.

As no one seemed willing to take the trouble to really investigate the matter, this idea gained ground until the Manitoba bar came to look upon it as right, and as did even certain of the bench to such an extent that, so late as 1892, in a case (*d*) in which the writer was engaged, he heard the announcement of counsel that there were estates of freehold in Assiniboia, received with incredulity by the presiding judge, who later had to admit the fact to be as stated. What makes it more surprising is that the late Chief Justice Wood, of Manitoba, a man of very great ability, held so early as 1873, as might have been expected, the proper view of the

(*d*) *Templeton v. Stewart*, 3 Western Law Times Reports, 189. *Vide* Appendix N.

question; this may be seen by referring to his finding, or report (e), as commissioner under the Manitoba Act, on certain conflicting claims to Lots 164 and 165 in the parish of Baie St. Paul. This is what the Chief Justice says:

It will be observed that John Tait left him surviving a widow, Isabelle Hallet, and children, Christina, James, Elizabeth, Barbara, and Andrew. If John Tait died before the passing of the Manitoba Act, James would probably take the land, subject to the dower of his mother, which, in the case of this land, would be worth next to nothing. If John Tait died subsequent to the passing of the Manitoba Intestacy Act, the 3rd of May, 1871, the land would go, one-third to the widow, and the remaining two-thirds would be equally divided among the remaining five children.

Nor is there wanting a judicial finding as to the fact of there having been estates in fee simple in Assiniboia. In Hilary Term, 1875, in the case of *McKenny v. Spence*, Man. temp. Wood, 11, the then Full Court of Queen's Bench for Manitoba, Wood, C.J., presiding, found (page 16) that Stephen Green was, on May 20, 1860, "seized of an absolute estate *in fee simple* in possession in and to Lots 241 and 242 according to the Hudson's Bay Company's survey," situate on Point Douglas, now part of the city of Winnipeg. This seems plain enough, but as has been seen, Mr. Burgess, fifteen years after, still maintained a contrary and erroneous opinion. The officials of the Land Titles Office at Winnipeg, where the Torrens Act is in force, were naturally of the prevalent opinion, until recently, that the estates held by the old settlers were leaseholds. But there was this difference between their conduct and that of the Deputy Minister of the Interior, they could see no reason why there should not have been estates in fee simple in Assiniboia, and readily abandoned the idea that there were only leaseholds in face of facts to the contrary. Not long after the Torrens Act was introduced in Manitoba, in 1885, they had held that the

(e) Quoted in letter from Dominion Lands Commissioner to Secretary of Interior, dated Nov. 19, 1891.

Manitoba Act was a conversion of leaseholds into freeholds, and that, in any event, between July 15, 1870, and the coming into force of the Manitoba Intestacy Act on May 3, 1871, the estate passed, not to the personal representatives, but to the heir-at-law, who, the law of primogeniture being then in force, was the eldest son (*f*). This view had been also entertained by Mr. G. W. Burbidge (*g*), Deputy-Minister of Justice (now of the Supreme Court Bench), and by Deputy-Minister of Justice Sedgwick (*h*) (now also of the Supreme Court Bench).

The whole question was finally brought to an issue and settled by the case of *Templeton v. Stewart*, above mentioned, and the present policy of the Canadian Government in issuing patents to Red River Settlers, may be found detailed in a late report of the present Deputy-Minister of Justice, Mr. E. L. Newcombe, Q.C., who has evidently given the matter much thought, and gone into it with a mind freed from bias. This opinion, dated July 25, 1893, from its importance, is given at length hereunder (*i*).

(*f*) Letter from Land Commissioner at Winnipeg to Deputy Minister of Interior Burgess, dated Aug. 1, 1889.

(*g*) Letter to the Secretary Interior, April 12, 1887.

(*h*) Letter to the Secretary Interior, dated March 17, 1888, and opinion of Aug. 19, 1889.

(*i*) Department of Justice.

Reference No. 335896.

OTTAWA, July 25, 1893.

To the Secretary,

Department of Interior,

Ottawa.

SIR,

Referring to Mr. Pereira's letter of the 13th instant, and to previous correspondence relating to the application for a patent for the inner and outer two miles of Lot 52 and of the northerly four chains of Lot 68, in the Parish of St. Paul, I have the honour to state as follows:—

As appears from the correspondence, the disposition of this case depends mainly upon the question as to the nature of the estate or interest which was held by purchasers from, or grantees of, the Hudson's Bay Company of lands in the settlement belt.

With regard to this question, I cannot but agree with the opinion

As has been seen, Canada agreed to confirm, "by grant from the Crown," all freehold titles conferred by the Company

communicated to your Department on several occasions by my predecessor, viz. : that where the only evidence as to the nature of the transaction between the Company and its grantee is that afforded by the entries in the land register of the Company, and such entries appear to be recorded of a free grant, or of a sale at a certain price, of the land in question, and there is no indication in the register that any less estate was intended to be granted, the presumption is that the intention was to dispose of the fee simple. This presumption could be rebutted only by evidence showing that in the particular case under consideration, this was not what was bargained for or intended by the parties. That in other cases where the record in the land register was of a like character, the Company apparently intended fulfilment of their agreement, granted, not the fee simple, but only a leasehold for a term of years is no evidence as against any particular purchaser or grantee or those claiming under him as his heirs-at-law.

The present is a case in point. The land register is the only evidence of the transactions by virtue of which George Setter became the owner of these lots. The entries which it contains are silent as to the estate or interest he was intended to take, unless the use of the word "grant" in the entries may be considered to afford an indication that the intention was to dispose of the fee simple, which is arguable. He must be taken, therefore, to have been the owner of the fee simple if the Hudson's Bay Company had power to grant him that estate, and I know of no sufficient reason for questioning that the Company had such power. I may point out here that Mr. Justice Bain, of the Court of Queen's Bench, Manitoba, in the case of *Templeton v. Stewart*, recently decided by him, holds the view above expressed with regard to the nature of the estate of a grantee of the Company.

George Setter died in 1868, intestate, leaving him surviving his wife, one son, John Setter, one daughter, Ann or Nancy Setter, the wife of James B. McKenzie, and the seven children of Margaret Setter, another daughter, the deceased wife of Alexander McBeth. His interest in these lands, being an estate in fee simple, thereupon passed to his son as his sole heir-at-law according to the law of England which was then in force in the settlement [Red River], subject to the dower of his widow. The widow died some years ago, and the interest of John Setter has, as the paper shows, become vested in his sister, Mrs. McKenzie. I am, therefore, of opinion that the patent should be issued to Mrs. McKenzie. I am to state that the Acting-Minister of Justice concurs in this opinion.

I am, etc.,

(Sd.) E. L. NEWCOMBE,
Deputy-Minister of Justice.

prior to March 8, 1869, and, for a long time, the fact that such a confirmation would be only something that the owner of such an estate was entitled to if he chose to ask for it, was overlooked—in fact, is yet overlooked; it is very doubtful if the Land Titles Office at Winnipeg would be disposed to give a certificate of title to the owner of an estate in fee before the Transfer, who had not got his patent. The District Registrar could be forced to grant it, however, for nothing is plainer in law than that the granting of letters patent to such an owner is practically the “quit claiming” by the Crown to him of an interest which it does not really possess; the Company once having parted with its interest in the lands, could not, even if it had so wished, derogate in any way from that grant by a subsequent agreement with Canada. *Templeton v. Stewart* (j) is an authority for this view.

So much for the lands actually occupied or owned by the settlers. There was in addition, however, a valuable right, expressly recognized by the Company, which had always been exercised by the owners of these river farms, running back two miles from their frontage on the river. This was the exclusive right to cut hay on the outer two miles immediately in the rear of the river lot, which outer portion came to be known as the “hay privilege.” Reference to the Laws of Assiniboia, viii., ix., and x., passed by the Council of Assiniboia, which was created and vested with authority by the Company, shows that this right of hay-cutting was limited to certain seasons between August 1 and 15; in other cases, the right was shared by many occupiers in common, such as on Point Douglas and St. Boniface Commons. Infringements of these regulations were visited with punishment as appears by a case (k) tried at Fort Garry, on August 19, 1847, of *Hudson's Bay Company v. Cook et al.* This, says the record, was an

(j) *Supra.*

(k) *Vide also Carriere v. Dagnon, ante, p. 66.*

"action raised against the defendants for trespassing in cutting hay at a time and place prohibited by proclamation." The Company had evidently brought the offender to justice merely as a warning to others not to be too grasping, for the only punishment inflicted was the forfeiture of the hay, this being deemed "adequate for the offence." The Canadian Government dealt with this right very liberally. Strictly speaking, it was nothing but an easement, but then it was an easement of such a peculiar nature that it extended over the whole of the land on which it was exercised, and from its very nature precluded occupation by a third party, for any occupation which interfered with the right of cutting hay would infringe on the easement, and it would be difficult to imagine an occupation that would not interfere with such a right, for the right to cut the hay would imply the right to prevent its free growth from being interfered with; in other words, the land could not be used for any purpose, as it would be too late in the season to plant any crop after the hay was cut. The Company having recognized these rights through the Court of Assiniboia, could not interfere with them, and for all practical purposes the outer two miles became the property of the owner of the inner; a dog-in-the-manger ownership truly, but, nevertheless, a very difficult one to combat.

It must not be forgotten, however, that the Indian Title had not been extinguished to the outer two miles, but only to the inner. This question is dealt with in the succeeding chapter.

After the Transfer to Canada, the Government appointed a special commission to inquire into the hay question. This body was known as the "Hay and Common Commissioners," and it presented its report on February 23, 1874, which was duly approved by the Governor-General in Council on April 17 of the same year. As this Order in Council is not generally known, because of its not being contained in the

volume published by the Queen's printer, it is now for the first time made public, and will be found given in full in Appendix O.

The recommendations of the Commission were very liberal, and provided, shortly, that where the outer two miles were not taken up in any way, the owner of each front or river lot in those parishes where such rights existed, the parishes of (1) St. Boniface, east and west, (2) St. Vital, (3) St. Norbert, (4) Ste Agathe, up to Salt Springs, (5) St. John's and Winnipeg, (6) Kildonan, (7) St. Paul, (8) St. Andrews, (9) St. James, (10) St. Charles, (11) Headingley, and (12) St. Francois Xavier, east and west, should receive a grant of the land in the outer two miles immediately in rear of his lot, "such grant to be in full commutation of all rights of common and of cutting hay, claimed in respect of the front lot." Where the whole of the outer two miles could not, for any reason, be granted, for the missing portion the owner was to receive scrip, redeemable in unoccupied Government lands, "to cover one-half of as much more land as there is in the part of the outer two miles so taken up;" this because the outer two miles was of peculiar value to the occupiers of the inner. The value of the lands was to be the Government price of one dollar per acre.

Those persons who were, under sub-sections 1, 2, 3, or 4, of section 32 of the Manitoba Act, above quoted, entitled to freehold grant from the Crown to lands outside those parishes in which the right of hay cutting was recognized by the Council of Assiniboia, received one dollar of scrip for each acre of land for which they were entitled to receive a patent.

For other provisions to meet particular cases, reference must be had to the Appendix. The results of this chapter may be summarized as follows:—

1. The Company granted estates both of freehold and leasehold in Assiniboia.

2. Such grants were made only on the Red and Assiniboine Rivers, where the Indian Title had been extinguished as specified on page 12.

3. In the case of the Fort Garry Pensioners, the estate granted was a freehold.

4. Where root of title is the ordinary entry in the Company's Land Register, with no qualifications, a fee simple must be presumed.

5. A fee simple would, in any case, be presumed after twenty years' possession. *Templeton v. Stewart*, Appendix N; *Taylor on Evidence*, §§ 148-51; *Roscoe's Nisi Prius*, 15th ed., 34, 38-40; *Best on Evidence*, 488-89.

CHAPTER V.

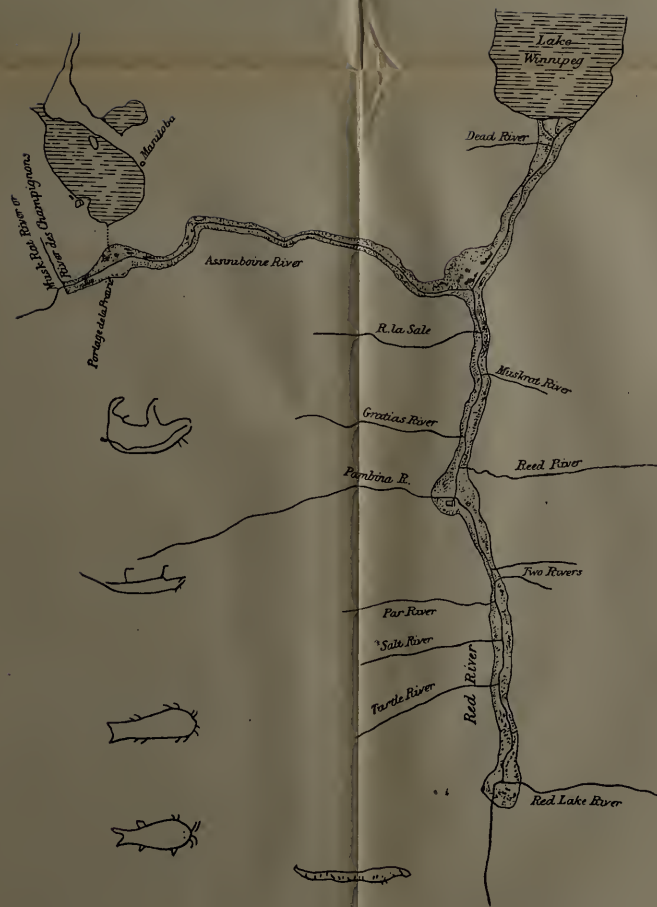
OF THE INDIAN TITLE AND HALF-BREED CLAIMS.

When the Indians of Red River, in 1817, entered into the treaty, already noticed, with Lord Selkirk, a rude map of the territory intended to be conveyed was signed by the chiefs of the tribes with their totems; a copy of that map, taken from Colony Register A, faces this page. It was in conformity with the time-honoured custom of English colonists in dealing with the savage tribes of America that this treaty was made, and undoubtedly this act on the part of the Earl was most conducive to the peace of the settlement.

The question of aboriginal title is one not too well understood, in spite of the fact that, in the course of the rapid extension of the British Empire, it is one that constantly crops up: for example, it was recently, if it is not yet, under consideration, in regard to the rights of the Matabele in Mashonaland.

In the United States and Canada, particularly, from the nature of the settlement of those countries, the matter has been the subject of the gravest consideration, and has repeatedly taxed the abilities of the highest tribunals. Possibly the opinion of no one would be received with greater attention than that of Chancellor Kent, who, in the first and third volumes of his Commentaries (*k*), enters most lucidly into an inquiry concerning the claims of the original possessors of his country. At page 378 he states that in the case of *Fletcher v. Peck*, 6 Cranch, 87, the opinion of the Supreme Court of the United States was declared to be that "the nature of the

(*k*) Blackstone edition, 1889, pp. 378-400.



(Signed) Selkirk

Niache Whetab

His  Mark
Le Sauvage


Nashkaden Komai

His  Mark
La Robe Noire

Kagajis Kebirwa

 Mark
L'homme Noir

Pigowis

His  Mark

Ouckidat

His  Mark

Premier

Signed in Presence of

Thomas Thomas

James Bird

F. Matthey Cap:

P. d'Orsonens Cap:

Miles Macdonell

L. B. Ch. de Lorimier

Louis Nolin J^r

MAP TO SHOW LANDS AT RED RIVER
CONVEYED BY INDIAN CHIEFS TO THE
EARL OF SELKIRK IN 1817.

Facsimile from Register "A."

Indian title to lands lying within the territorial limits of a State, though entitled to be respected by all Courts until it be legitimately extinguished, was not such as to be absolutely repugnant to a sesin in fee on the part of the Government within whose jurisdiction the lands are situated." He adds, however, that though this was the language of a majority of the Court, yet it was a "mere naked declaration, without any discussion or reasoning by the Court in support of it; and Judge Johnson, in the separate opinion which he delivered, did not concur in the doctrine, but held that the Indian nations were absolute proprietors of the soil, and that practically, and in cases unaffected by particular treaties, the restrictions upon the right of soil in the Indians amounted only to an exclusion of all competitors from the market, and a pre-emptive right to acquire a fee-simple by purchase when the proprietors should be pleased to sell." In the subsequent case of *Johnson v. McIntosh*, 8 Wheaton, 543, this large view of the title of the Indians was somewhat curtailed, and in the language of Marshall, C.J., their right was defined to be that of occupancy only, and subject to the absolute title of the state to extinguish it. In the words of Kent, the Indians enjoyed no higher title than that founded on simple occupancy, and were incompetent to transfer their title to any other power than the Government which claimed the jurisdiction of their territory by right of discovery. In a still later case (*l*), *Worcester v. State of Georgia*, 6 Peters, U.S., 515, arising out of certain statutes of that State of 1828-29-30, the Supreme Court decided that the right to the soil claimed by European governments, as a necessary consequence of the right of discovery and assumption of territorial jurisdiction, was only deemed such in reference to the whites, amounting, so far as the Indians were concerned, only to an exclusive right to purchase such lands as they were willing to sell; the various

(l) See also *Mitchell v. United States*, 9 Peters, 711.

royal grants and charters asserted a title to the country against Europeans only, and were blank paper as regards the Indians. Chalmers (*m*) states that the practice of the European world had constituted a law of nations which sternly disregarded the possession of the aborigines, because they had not been admitted into the society of nations. This principle doubtless influenced the naïve "Councill's opinion" (*n*) given, about 1675, by six well-known counsel regarding lands in New York, when they found, in answer to the second question submitted to them—

Though it hath been and still is ye usuall practice of all proprietors to give their Indians some recompence for their land, and seem to purchase it of them, yet yt is not done for want of sufficient title from ye King or Prince who hath ye right of discovery, but out of prudence and Christian charity, least otherwise the Indians might have destroyed ye first planters (who are usually too few to defend themselves) or refuse all commerce and conversation with ye planters, and thereby all hopes of converting them to ye Christian faith would be lost.

Nevertheless, as Kent points out, "it is certain in point of fact that the colonists were not satisfied (with these loose opinions or latitudinary doctrines), or did not deem it expedient to settle the country without the consent of the aborigines under the sanction of the civil authorities. The pretensions of patents were not relied upon, and the prior Indian right to the soil was generally, if not uniformly, recognized and respected by the New England Puritans." Finally, the same authority states that the Government of the United States has never insisted upon any other claim to the Indian lands than the right of pre-emption upon fair terms.

In Canada the Government has proceeded upon similar principles, though Chancellor Boyd, in a late case (*o*), places the

(*m*) Political Annals, 676.

(*n*) *Documents relating to the Colonial History of the State of New York*, vol. xiii. p. 486. Also quoted at length in *Regina v. St. Catherine's Milling Co.*, 10 Ont. 206.

(*o*) *Regina v. St. Catherine's Milling Co.*, at p. 230, *supra*.

rights of the Indian on a much lower plane, and states that he has "no claim except upon the bounty and benevolence of the Crown," and he quotes with approval the extract given from "Councill's Opinions." Nevertheless, he admits (*p*) that a right of occupancy attached to the Indians in their tribal character, though they were unable to transfer it to any stranger, and it was susceptible of extinguishment at the hands of the Crown alone, "a power which, as a rule, was exercised only on just and equitable terms." On appeal, one of the judges, Burton, entertained the same views as the Chancellor, but the other three took a broader view. Hagarty, C.J., stated that "the Indian tribes were sparsely scattered over that region (Western Ontario) and the rest of the northern continent to the Rocky Mountains. No surrender of Indian rights had been made, and, according to the settled practice of the United Provinces of Canada, evidenced and sanctioned by repeated statutes, no attempt appears to have been made to grant titles or encourage settlement so long as the Indian claim was unextinguished." Patterson, J., p. 169, quoted with approval the rule as laid down in Story's Commentaries, on the Constitution of the United States, 1833 sec. 6, to the effect that the aborigines "were admitted to be rightful occupants of the soil, with a legal as well as a just claim to retain possession of it, and to use it according to their own discretion." When this case came before the Supreme Court of Canada (*q*), the findings of the courts below were upheld, and the title of the Indians put on the ground assigned it by Chief Justice Hagarty, not on that much lower one favoured by Chancellor Boyd. Chief Justice Sir W. J. Ritchie (with whom Fournier, J., concurred), stated "that the Indians possessed a right of occupancy, the Crown possessing the legal title, subject to that occupancy, and the absolute exclusive right to extinguish the Indian title either by conquest or by purchase."

(*p*) *Ibid.* p. 209.

(*q*) 13 S. C. R. 577.

Mr. Justice, now Chief Justice Sir Henry, Strong quoted with approval the expressions of Chancellor Kent above referred to, and held that the Crown recognized an usufructuary title in the Indians to all unsurrendered lands, which, "though not perhaps susceptible of any accurate legal definition in exact legal terms, was one which nevertheless sufficed to protect the Indians in the absolute use and enjoyment of their lands, whilst at the same time they were incapacitated from making any valid alienation otherwise than to the Crown itself, in whom the title was, in accordance with the English law of real property, considered as vested." The learned judge also quotes with approval the language of Chancellor Kent on the 383rd, 385th, and 386th pages of his third volume, and in particular his remarks on *Mitchell v. United States*, to the effect that that "possession was considered with reference to Indian habits and modes of life, and the hunting-grounds of the tribes were as much in their actual occupation as the cleared fields of the whites, and this was the tenure of Indian lands by the laws of all the colonies."

Gwynne, J., went further, and held that the Indians had an estate, title, and interest in their hunting-grounds, which could not be divested from them nor extinguished except by cession made in the most solemn manner to the Crown.

Henry, J., was of opinion that the right of the Indians certainly was not a fee, but stated that the Crown recognized such a right in them that they were not required to give up their lands without some compensation. Taschereau, J., quoted with approval the principle that while European nations respected the rights (claims) of the natives as occupants, yet they asserted the ultimate dominion and title to the soil to be in themselves.

It is a matter of regret that the Judicial Committee of the Privy Council, when the matter came before it by way of appeal (*r*) from the Supreme Court of Canada, did "not con-

(*r*) 14 Appeal Ca. at pp. 55, 58.

sider it necessary to express any opinion" upon this interesting point, but intimated that though there had been all along vested in the Crown a substantial and paramount estate, yet it did not become a *plenum dominum* until the Indian title was "surrendered, or otherwise extinguished." The title was, however, distinctly stated not to be a fee simple, but "a mere burden" on the title of the Crown.

It was because the Company had not a *plenum dominum* to the land more than two miles back from the Red and Assiniboine rivers, save at its forts, that it granted no lots lying outside this belt to settlers. When the Transfer to Canada took place, it has been noticed (s) that the Company was careful to make provision for the extinguishment of this Indian title, for the eleventh of the "terms and conditions" was that "any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communication with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them."

Canada at once assumed the obligation, and carried it out faithfully, for section 31 of the Manitoba Act provided for "the extinguishment of the Indian title to the lands in the province" by appropriating one million four hundred thousand acres of the ungranted lands, vested by that Act in the Government of Canada, for the benefit of the children of the half-breed heads of families residing in Manitoba at the time of the Transfer to Canada, July 15, 1870, the same to be selected in lots or tracts in such parts of the province as the Lieut.-Governor of Manitoba might deem expedient, and to be granted in the mode and under the conditions to be prescribed by the Governor-General in Council.

One not familiar with the peculiarities of the people known in Manitoba as half-breeds, or *metis*, would naturally

(s) *Supra*, p. 20.

ask how the gift to them would extinguish the Indian title, though the name itself would go to show that they had a right in blood to participate to the extent of a moiety. The half-breeds, then, are the descendants of the early fur traders, voyageurs, *coureurs de bois*, and white men generally, by Indian women. In early times these children were illegitimate, for even if there were the inclination to go through the marriage ceremony there was not the opportunity; but later, with the advent of missionaries at Red River, came a new order of things, and from that time (1818) marriages were regularly solemnized, and those who had not previously been married persuaded to become so, or, rather, they generally eagerly embraced the opportunity (*t*) to have their union legalized. It is difficult to say when a half-breed ceases to become a half-breed, and is looked upon as a white; the manner of life and associations has much to do with it. Colloquially speaking, those who are known to have Indian blood in them, not necessarily half, but possibly only a quarter or an eighth, and show traces of it physically, combining with that trait any characteristics of the Indian in their manner of life, are called, loosely, half-breeds; but at the same time there are many cases where two people might have exactly the same amount of Indian blood and be so different in appearance and mode of life, that while the one would be readily spoken of as a half-breed, the other would as readily be accepted as a white man.

Strangely enough, the Manitoba Act does not define the term. The difference between a half-breed and an Indian is pointed out in a negative way by the Indian Act, sec. 12, which says that no half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and no half-breed head of a family, except the widow of an Indian, or a half-breed who has already been admitted

(*t*) Cf. *Substance of a Journal at Red River*. Rev. John West. 1824.

into a treaty, shall, unless under very special circumstances to be determined by the Superintendent-General, be accounted an Indian, or entitled to be admitted into any Indian treaty.

These half-breeds, then, considered themselves as representing the Indians, though they really did not, but were an intermediate class; and the Government fell in with their view, as they were a large and influential body. The Indians had no objections to the arrangement, they themselves being given reservations ample for their wants, and entering into treaties on their own account satisfactory to them, an account of the more important of which may be found in the valuable work of the late Hon. Alex. Morris, formerly Chief Justice, and Lieut.-Governor of Manitoba, on that subject.

Doubts arose as to who were, exactly, the children of half-breed heads of families intended to be benefited under the Manitoba Act, so it was explained in 1873, 36 Vic. cap. 38, that they were "all those of mixed blood, partly white and partly Indian, who are not heads of families." It was estimated that the appropriation would give about 140 acres (*u*) to each child, making the number of them ten thousand; but this estimate was found to be too high, the number being between six and seven thousand, so the allotments were increased to 240 acres. The mode of distribution of the grant was provided for by Orders in Council (*v*) of April 25 and May 26, 1871, and September 7, 1876, to which reference should be made, if necessary.

After the distribution was provided for, it was found that an injustice had been done the heads of families, who were just as much entitled to consideration as their children; so another Act was passed in 1873, 37 Vic. cap. 20, which gave

(*u*) 36 Vic. cap. 37, preamble.

(*v*) *Vide* also Orders in Council of April 19, 1886, and December 31, 1890; and 35 Vic. cap. 23, s. 108; 36 Vic. cap. 38, ss. 2, 3; and 37 Vic. cap. 20.

to such heads of families, residing in Manitoba before the Transfer, a grant of one hundred and sixty acres, or government scrip for one hundred and sixty dollars, the latter to be receivable in payment for Dominion Lands; the lands to be granted under regulations to be made by the Governor-General in Council. For this purpose the term "half-breed heads of families" was held to include half-breed mothers or fathers, or both, as the case might be. The grantees under this arrangement ultimately got 240 acres for the same reason as did their children.

The lands distributed under these regulations were to satisfy the claims of the half-breed population of the parishes of Ste. Agathe, Ste. Anne, St. Andrews, St. Boniface, St. Clements, St. Charles, St. Francois Xavier, St. James, St. John, St. Laurent, St. Norbert, St. Paul, St. Peters, St. Vital, Baie St. Paul, Headingly, High Bluff, Kildonan, Oak Point, Poplar Point, Portage la Prairie, and White Mud, and lists (*w*) were

(*w*) These lists were issued in the form of posters, ranging in size from a folio sheet devoted to the 59 grantees in the parish of St. John to a great poster some five feet in length to contain the 1183 names of the allottees in St. Francois Xavier and Baie St. Paul. An extra list, generally overlooked, called "Various Parishes," was issued on October 10, 1878, and contained a few allotments made up to that date. These lists were posted up in the various Dominion Land Offices, and distributed in other ways. They were in great demand, both by the allottees and by the speculators or "claim-runners," as they were called, who made a very lucrative business in buying and selling claims, both land and scrip. Gross frauds were practised in numerous instances on the grantees and valuable inheritances were thrown away for a mess of pottage, or a flask of whisky, to employ Western methods. So general was the practice of dealing in these lands, that there is scarcely a prominent person in Winnipeg, there at that time, who has not made some money, not necessarily dishonestly, out of half-breed claims. This speculation extended even to certain reverend gentlemen, not very many, who did not hesitate to lend the odour of sanctity to these transactions, but with indifferent success. The supply of these lists soon ran short, and a complete set was worth a large sum; the author has been told of \$500 being offered and refused for one. He only knows of three perfect ones. They are still of considerable practical value, as they give much information in a way easy to get at,

issued from time to time by the Department of the Interior, between 1877 and 1880 (the last being that of the parishes of St. Vital and St. Boniface on June 14 of that year), giving the lands allotted to the various residents of the parishes, and particulars relating to the grantees. Reference to these lists, especially those of St. John, St. James, and Kildonan, will show that the families of many opulent settlers at present residing in those localities and in Winnipeg, took advantage of the benefits of the Manitoba Act, entitling them to grants of lands as children or heads of families, as the case might be.

Though there was no legal obligation for her to do so, yet Canada, having acquired a vast and legal domain at very little cost, could afford to be generous, and so she lent a willing ear to the demands of another class which clamoured for consideration in this liberal distribution of lands. This class was composed of white settlers who had come to Assiniboia at the time of the founding of the colony by Lord Selkirk, under his auspices, or "between the years 1813, and 1835, both inclusive, or the children, not being half-breeds, of such original settlers." Accordingly in 1873, by 36 Vic. cap. 37, it was provided that forty-nine thousand acres should be set aside for these claimants, who were, in the absence of an exact census, estimated as not exceeding three hundred and fifty, the object being to grant to each one hundred and forty acres of land. But on the census being taken, it was discovered that they numbered five hundred and thirty, which would only allow about ninety-two and a half acres to each person; so it was decided in 1874, by 37 Vic. cap. 37, sec. 4, to recognize their claim to one hundred and sixty acres, which

being arranged in alphabetical order. From an historical point of view, it would be difficult to over-estimate their importance, which will constantly increase, for here is a complete record of a whole people, and a very peculiar people at that. The fulness of the particulars is mainly due to the completeness of the registers kept by the Roman Catholic clergy, under the guidance of that well-known prelate the late Alexander Antonin Taché, the first Archbishop of St. Boniface.

was given to them in the form of scrip, they having requested the grant to be made to them in that manner.

This was all very well so far as it went, but it appeared that there were a number of people who had come into Red River between the dates above mentioned, *not* under the auspices of Lord Selkirk; so they likewise, and their children, not being half-breeds, received scrip for one hundred and sixty dollars, which was receivable in payment for the purchase of government land at one dollar per acre.

Why an invidious distinction should have been drawn between a man who came to Red River in 1835 and one who came in 1836, it is impossible to understand. The Selkirk settler had no claim whatever on Canada as had the half-breed or the Indian. He came out, and either bought or leased land from Lord Selkirk. If he had no means he could have squatted, and would have been, as has been seen, entitled to a grant under the Manitoba Act, which fully provided for the recognition of titles by occupancy, so as to give the industrious settler and the actual squatter the reward of his labour and foresight; but on what principle others should get a slice of the public domain, on which they had no moral nor legal claim, it is difficult to imagine. No distinction should have been made between them and the ordinary settler, who is entitled to his free homestead.

An interesting instance of a recent well-deserved recognition of a true pioneer may be seen in the *Canada Gazette* of April 21, 1894, which records the Order in Council granting scrip to the heirs of Louis Bourassa, who went to the Athabasca District so early as 1833, and resided there till he died in 1879. In the same issue of the *Gazette* is a list of thirty-one approved claims of original settlers in such remote places as York Factory, Portage la Loche, Fort Simpson, Lesser Slave Lake, Oxford House, Caribou Lake, Assnaburg House, Athabasca, etc., where they were residing before July 15, 1870. Truly the history of North-West Canada is contained in the iron vaults of the Department of the Interior.

A peculiar class of claims, deserving a passing notice, which had to be dealt with by the Dominion was that known as "Staked Claims." From an early period, about 1862, the Roman Catholic population had been in the habit of wintering stock along the generally well-sheltered banks of the Seine, Rat (*x*), and La Salle rivers. Such a

(*x*) Rat River had been a half-breed settlement from a comparatively early period. At least, so it would appear from the following communication, the original of which is in the author's possession :—

"À Rob. P. Pelly Ecuyer,

"Gouverneur de l'Assiniboia,

"Fort Douglas.

"Le 2 Mars 1825.

"Monsieur,

D'après ce que m'ont dit plusieurs personnes, il parvit que la plupart des gens libres de Pembina voudraient abandonner cet endroit. Vû la fertilité du sol, ils y restervient bien volontiers, s'ils pouvaient avoir un Prêtre pour les y desservir : mais comme ce n'est point mon dessein d'y rétablir la Mission contre les intentions formelles des Exécuteurs du feu Comte de Selkirk, et que d'un autre côté, ils perdent toute espérance d'avoir un Missionnaire du côté des Etats-Unis, comme ils l'avoient espéré depuis la pétition qu'ils ont faite à ce sujet ; ils voudroient en conséquence se fixer sur la Rivière Rouge dans un endroit qui servit approuvé de vous, et où nous pourvions les desservir. J'ai proposé à quelques uns d'aller s'établir à la Prairie du Cheval Blanc ; mais le lieu ne leur convient pas. En s'établissant ici ils trouvent qu'ils servient trop éloignés de l'Église, vû quel les terres d'alentour sont déjà concédées, et que leur désir étant de s'en rapprocher, ils se trouveroient encore placés bien désavantageusement pour l'instruction de leurs enfans, qu'ils ont principalement en vue.

"Ayant pris leur désir en considération, j'ai jugé à propos de vous le communiquer, pensant que vous ne serez pas éloigné de leur accorder des terres dans un endroit où nous aurons la facilité de leur faire remplir leurs devoirs religieux. M'étant informé qu'elles étoient les places les plus avantageuses pour un établissement, la plus proche qui m'a été enseignée, est depuis la Rivière au Rat inclusivement en remontant vers la Saline. Je servis flatté de connoître vos intentions à ce sujet.

"Dans le cas où ce plan pourroit s'exécuter, presque tous ceux qui laisseront Pembina manqueront de semences ; car la disette y a été considérable. Si vous étiez dans la disposition de leur faire quelques avances, je désirerais savoir à quelques conditions ce sera, pour les en informer.

"J'ai l'honneur d'être,

"Monsieur,

"Votre très humble et ob. serviteur,

"J. N. EV. DE JULIOPOLIS."

use of land was not, it is submitted, sufficient to give the claimant any right to consideration under the Manitoba Act, unless, of course, there were other additional circumstances in favour of the applicant. Those in authority, however, on the principle, doubtless, of taking all that can be got, advised the half-breeds to stake, work, or otherwise define claims to unoccupied lands in the settlement. Little encouragement was needed to incite the "staker" to action, for they set to work with the most praiseworthy alacrity, and in a surprisingly short space of time the fronts of the three rivers fairly bristled with stakes, "blazes," and claims. It must not be imagined that the staker in general was content with one claim; on the contrary, with commendable forethought, he made provision not only for himself and his living children, but those dead and in expectancy. One individual in particular, who aptly rejoiced in the name Solomon, his surname being Venne, and whose "growing virtues" were not "circumscribed" in the manner detailed in the *Elegy*, staked out upwards of fifteen claims, not along the small streams as did his compatriots, but, being a man of large ambitions, selected the duly surveyed and allotted Red River, no less, for this purpose.

Canada at first refused to recognize these staked claims at all, but pressure was brought to bear, and by Order in Council of January 29, 1876, certain concessions were made. These were enlarged and made more definite on April 20, 1876, and the government finally succumbed on February 25, 1881, by virtue of which last-mentioned order all patents have been issued.

CHAPTER VI.

OF THE SURVEYS, METHOD OF TRANSFER OF LAND, AND
RECORDS OF ASSINIBOIA.

In his interesting and instructive sketch (*y*) appended to the report of the Department of Interior for 1891, Mr. J. S. Dennis, D.T.S., states, at the beginning of his paper, that the "only surveys, other than explorations, which had been effected in the territory purchased (Rupert's Land), covered a narrow belt of lots fronting on the Red and Assiniboine rivers, and extending a short distance up and down these streams from their junction at Fort Garry. These surveys had been performed by Messrs. Sabine and Goulet, under instructions from the Hudson's Bay Company, with the object of defining the boundaries of holdings granted by that Company to settlers along these rivers." Mr. Dennis, not having the requisite books and documents at hand, has fallen into several errors in the above remarks, in pointing out which, it is not to be understood that any reflection is cast on the accuracy of his subsequent statements referring to the surveys of the Dominion Government in and after 1869, in regard to which be it said that Mr. Dennis is exceptionally well qualified to speak, and has furnished us with a valuable addition to a branch of Manitoba's history hitherto neglected.

The surveys of the Red River Settlement were not made by Messrs. Sabine and Goulet, who were employed at a much later date by the Council of Assiniboia to make local surveys for parties desiring to take up lands outside the regular and general surveys; nor were they made by the

(*y*) A Short History of the Surveys made under the Dominion Lands System, 1869 to 1889.

Hudson's Bay Company. It was Lord Selkirk who caused the first survey of his own settlement to be made, very many years before either Goulet or Sabine came to Red River. It was done shortly after the arrival of the first settlers (*z*) in the colony in August, 1812. No actual date can be fixed for the commencement or ending of the survey, but, as has been seen (*a*), in the summer of 1813 or 1814, mentioned in the Parliamentary Report of 1819, "the surveyor of the colony, in laying out some lots for settlers, insisted upon running one of his lines through the middle of the garden of the North-West Company's post, which, after some opposition, was submitted to." Mr. Ross states (*b*) that when Lord Selkirk came to Red River in 1817, Mr. Fidler (*c*), the surveyor, had run

(*z*) *Ante*, pp. 7, 9.

(*a*) *Ante*, p. 9.

(*b*) *Ante*, p. 11.

(*c*) This was Mr. Peter Fidler, born August 16, 1769, a very well-known officer in the service of the Company. He was stated to have made the survey of the District of Assiniboia when it was conveyed to Lord Selkirk. His name is frequently mentioned in the Parliamentary Report of 1819, and in the Reports of Trials at Montreal and York. He was a man of education, and his will, made at "Norway House, Winipie River (*sic*), North America," on August 16, 1821, describes him as "Surveyor and Trader for the Honourable Hudson's Bay Company." In the latter part of the following year he died, and was buried at Fort Dufferin. His will is a very interesting one. He leaves "all my manuscript Journals, beginning in 1791 and continued regularly since 1796 to the present date or time of my decease; also four or five vellum-bound books containing fair copies, etc., of the narratives of my former journeys, astronomical and meteorological observations made by me in different parts of the interior of Hudson's Bay; also all my manuscript maps of the aforesaid places, the rough copies of my thermometrical observations," to the committee of the Company. This invaluable collection the Company disclaims all knowledge of, both in London and Canada—a very great loss indeed. He further gave his library of about five hundred books (a great collection in Rupert's Land in those days) and all his printed maps, two sets of twelve-inch globes, a large achromatic telescope, a Wilson's microscope, a brass sextant by Blunt, a barometer and several thermometers, to the Governor of the Red River Colony in trust for the public benefit, "but none of the things to be lent out of the Government House of the said Colony," all declared to be "for the general good of all those colonists settled in the lands of the Earl of Selkirk in Assiniboia."

PLAN of the SETTLEMENT on RED RIVER, as it was in June 1816.



N. From a little below Frog Plain to the Forks, & thence to Catfish Creek, as also part of the lands between Red River & the Little River, has been for the most part surveyed with Chain & Compass. — The rest of the Plan is laid down from Eye draughts.

- A The place where Governor Simple and his Party were massacred on the 10th June 1816.
- B & C Settler's Lots — established in 1814, laid waste by the North West Company in 1815, and again in 1816, & finally reestablished in 1817.
- C & D Lots laid waste in 1815, and not since reestablished.
- E & F Place where the Germans & Swiss of the Regiment de Miron &c have been settled, upon the reestablishment of the Settlement in 1817.
- G Site of the Chapel & other Buildings erected in 1818, by Missionaries sent by the Roman Catholic Bishop of Quebec, for the instruction of the Canadians, resident at Red River.

Plains, Prairies or Grassy Downs extending 30 or 40 Miles northward and westward, without any interruption of extensive Woods or Swamps, but occasionally varied by small Lakes, Hills, and tufts of Wood.

H. This track extends to Ossimbouyne River, about ten Miles West of the point H and 20 or 30 below Portage des Prairies.

Cars might pass without difficulty in this direction.

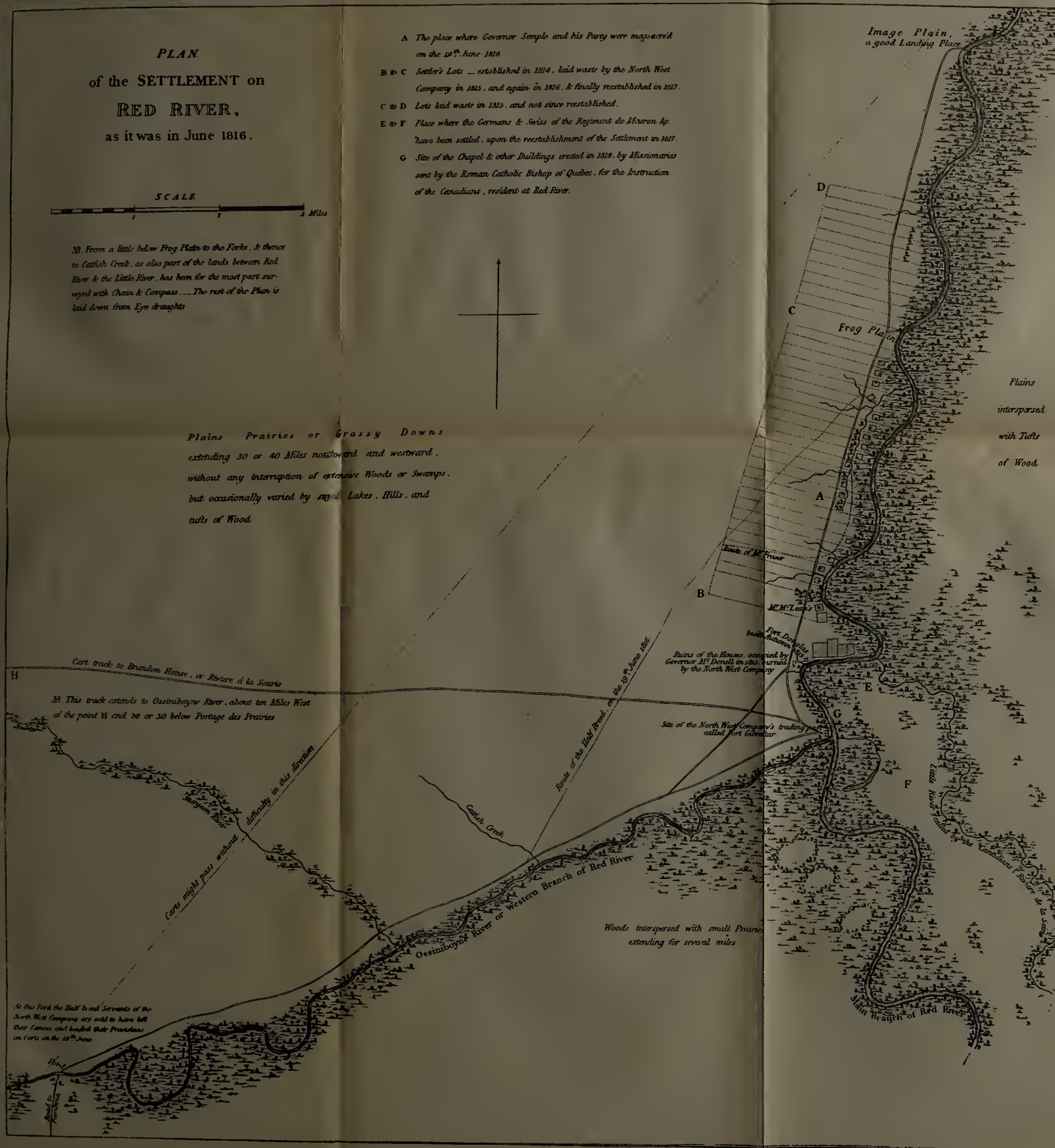
At this Ford the Staff & red Servants of the North West Company are said to have left their Canoes and loaded their provisions on Carts on the 10th June.



Woods interspersed with small Prairies extending for several miles.

Image Plain, a good Landing Place.

Plains interspersed with Tufts of Wood.



a line and marked off certain lots on the Red River, in the direction North 12° East, or thereby. Fortunately, there are two plans of this survey in existence, or rather copies thereof, one to be found accompanying the Report of 1819, and the other in the Amos "Report of Trials, etc.," which faces this page. According to this plan, these "lots were established in 1814;" they are thirty-six in number. Mr. McLean's appears to be double the size of the others.

So far as is known, there is no means now in existence by which the exact boundaries of these lots may be established; but, as has been seen, Lot 4 is now occupied by St. John's Cathedral, and from this starting-point a calculation may be made as to the approximate location of the others (*d*). A copy of the original plan to accompany the Report of 1819, marked "True Copy," and signed by Mr. Wm. Sax, the surveyor, will be found, with the report of Mr. Commissioner Coltman, at Ottawa (*e*).

Not one of these donations of this public-spirited man has survived. Not content with this, he gave a lot of valuable stock and the increase, purchased from Mr. John Wills, a partner of the North-West Company in 1813, for £100 sterling, "to be distributed gratis amongst any of the most deserving settlers at the discretion of the said Earl of Selkirk or his agent;" Mr. Fidler did not know, in his remote situation, that the Earl had been dead considerably over a year. He refers to his "lawful wife Mary," who was an Indian woman, their first child, Thomas, having been born at York Factory, June 20, 1795, and the youngest, Harriet, July 9, 1822; at the time of the making of the will, Peter, born at Norway House on July 2, was the eldest. He also refers to his uncle Jasper and his brother James; and to his "copyhold lands and new house, situated at Hockley, in the town of Bolsover, in the county of Derby, now in the occupation of my mother, Mary." Administration was granted on October 22, 1827, to Thomas Fidler; a number of descendants are living in Manitoba. In Appendix P. will be found a copy of a most interesting letter to him from Mr. Alex. Lean, one of the proprietors of the Company, which throws an important light on the negotiations leading up to the amalgamation of the rival companies in 1821.

(*d*) *Ante*, pp. 11, 25; *vide* also p. 23 for names of several settlers occupying particular lots.

(*e*) Archives: Colonial Records, No. 151, part i. p. 87.

The next survey of which there is any mention occurred in 1817, when Point Douglas was divided up into lots (*f*) to be portioned among the Earl's disbanded soldiery. It is not stated who made this survey, but it was, doubtless, Mr. Fidler. His successor in office, Mr. William Kemp (*g*), was occupied several years in making a general survey of the settlement.

On August 20, 1822, it had been determined, at a meeting of a Temporary Council held at York Factory (*h*), that "small allotments of twenty or twenty-five acres would be made for the [Company's] men with families, and a general establishment, under the plan of a School of Industry, would have to be formed for the orphan children:" assistance was to be given to the men in the shape of clothing, tools, beds, and ammunition, in order to enable them to build houses and maintain their families till they should reap a crop. "It is not to be expected that the men will do this of themselves, and the managers of the settlement [Lord Selkirk's] will not consent to a large population of this kind thrown upon them unless they are properly provided for, and under some efficient management and controul." It was decided to put in charge "an intelligent Chief Factor who had the talent of managing the people, together with the necessary assistance of clerks;" he to make "the requisite arrangements with the gentleman in charge of the settlement for the location of these families." Mr. John Clarke was selected for this office, and he worked in co-operation with Governor Bulger to settle these retired

(*f*) *Ante*, p. 26. *Vide* references to surveys : Gunn, 199, 200, 239, 225 ; Ross, 45, 77.

(*g*) Mr. Kemp was not only the Colony surveyor, but also sheriff of Assiniboia, having been appointed to that office at a General Court of the Company held in London, May 29, 1822. Writing to the author on April 19, 1892, Mr. Chief Factor William Cowan, says, "I only know about Kemp that he was a surveyor, and made a survey of the Red River Settlement."

(*h*) Archives : Bulger Papers, vol. ii. p. 251. *Vide ante*, pp. 30 *et seq.*, for prior remarks on these settlers.

servants in convenient localities (*i*). Mr. Kemp, the surveyor, drew up a plan in February, 1823, of a village on the Assiniboine River, but, the Roman Catholic clergy having raised some objections, the Image Plain was selected by Mr. Clarke as a more suitable place, it being acceptable to Father Dumoulin, and eight lots of 32 acres in extent, which had been laid out there in the preceding autumn by Mr. Kemp, were allotted to various persons, "the first commencing at about 60 yards below the Pigeons." "If," writes the Governor to Mr. Clarke, "you will cause these eight lots to be drawn for, and the people who gain them to attend altogether upon a certain day (giving us one day's notice), Mr. Kemp's chain-carrier shall go with them to the spot, and point out their respective numbers. For the rest, be assured that Mr. Kemp is anxious to get them settled, and will do so as soon as possible." The names of John Park, J. Whiteway, J. Foster, and George Spence are mentioned as having received certificates for lands up to that time; more were granted later.

The necessity for a careful survey was urgent, for, as the Governor says, "the inhabitants settled upon the Red River above the Forks complained to me that, the limits of their lots being still undefined, they were afraid either to complete the buildings they had already erected or to cultivate the land around them, and they appealed to me, to remedy the mischievous confusion. I considered (erroneously perhaps (*j*)) that my first duty was to attend to them—the old settlers—who had struggled through successive years of desolation, and were now in consequence burthened with a very heavy debt, and I gave Mr. Kemp directions to ascertain and mark off

(*i*) An interesting correspondence between Mr. Clarke at Fort Garry, and the Governor at Fort Douglas on the subject, will be found in the Bulger Papers, vol. iii., April, 1823.

(*j*) Referring to claims put forward by Mr. Clarke for immediate consideration of the convenience of the newly arrived retired servants of the Company.

their limits, previous to his going to the Image Plain." The Governor refers to Mr. Kemp's exertions, and praises him highly, saying that he "is surpassed by no man that I have ever known in zeal and industry in the performance of his professional duties," which were very arduous because of the "manifold evils occasioned by his predecessor (Mr. Fidler), who, in the character of a surveyor, has spread confusion throughout the land."

It is much to be regretted that no plan of this important survey of Mr. Kemp's can now be discovered. Application was made by the writer to every quarter in which there was any chance of the plan being found, but without success. That it was in existence a few years ago there is no doubt. Mr. James Taylor, of Prince Albert, N.W.T., who has given considerable attention to the old records of Assiniboia, informs the writer that he consulted this map, and also that of Mr. George Taylor (1836-8), on several occasions in the Dominion Lands Office in Winnipeg. He took particular notice of the map, being, as a descendant of one of the original settlers, much interested in it, and also wishing to examine it on behalf of others similarly situated. It was dated 1822. On one occasion Mr. W. G. Fonseca, a well-known resident of Winnipeg, was with him, and they examined the map together. The last time Mr. Taylor saw it was about a fortnight before the then agent, Mr. A. H. Whitcher, was removed to Ottawa, to the Topographical Surveys Branch; this was, he thinks, in 1890; Mr. Whitcher then told him that he had been instructed to forward all the old maps to Ottawa. The writer inquired in December, 1893, at the Winnipeg office about the map, and was told that it was not there; that the old maps had been sent to Ottawa some years before by instructions from the Department of the Interior. Application was then made to the Department, but the secretary replied, January 10, 1894, "We have no record in the Department of the Kemp survey." Where is it, then? The reluctance of the

Department of the Interior to give any information in regard to the old surveys is proverbial ; it has made many grievous blunders, and fears investigation. Either the Department has designedly suppressed the map, or it has been stolen from its custody. Each of these alternatives lays the officials of that Department open to censure.

Mr. Roger Goulet (*k*), who did a good deal of surveying for the old Council of Assiniboia, and is now employed in the Dominion Lands Commission at Winnipeg, informed the writer in the autumn of 1893 that he well remembered the plan of Kemp's survey, having repeatedly had occasion to consult it in discharge of his duties. He particularly remembered the map from the fact that portions of it were coloured green, doubtless to show the number. Before the Transfer it was in the custody of the Company ; since then he had seen it, and believed it to be in the Dominion Lands Office at Winnipeg.

Mr. James Taylor says that the map comprised the Selkirk Settlement river lots, and agreed with Taylor's survey, of which full particulars are yet extant, both as to the courses of the lines and the distance from the river, but all the numbers are changed. For instance, Michael Reine, or Rhyne, was allotted Lot 911 in Kemp's survey ; this appears in Taylor's survey as 771, being so entered in the Company's Register B, and in the Dominion Government parish survey it is recorded as 117. Fortunately, there are preserved to us two leases, dated August 13, 1824, of Lord Selkirk granting estates for 1000 years in lands described by Kemp's survey. These have already been referred to at a prior page (*l*), but the description of the two lots set out in them is here given :—

Lot 819 :

Beginning at a post planted on the east bank of Red River, and running east two English miles or thereby, thence eight English chains in

(*k*) Born at Red River, August 15, 1834.

(*l*) *Ante*, p. 53.

a southern direction, thence west to the bank of the Red River, and from thence along the course of the same to the place of beginning.

Lot 845 :—

Beginning at a post planted on the east bank of Red River, and running N. 71° E. twenty-five chains, thence south to the swamp and round the east side of the swamp to the track leading to Hayfield farm, thence N. 78° W. to the Bank of Red River, and from thence along the course of the same to the place of beginning.

This lot comprised 215 square acres ; the former 120 square acres. Robert Logan was the grantee in each instance. It has been noted on page 62, 63, that in 1823, Charles Gaspard Bruce got in fee simple Lot 158, eleven acres according to the "official plan," which must have been Kemp's ; Michael Gatien got 153, ten acres, and Joseph Watt Lots 154 and 155.

A number of years after the completion of Kemp's survey in 1822, Lord Selkirk's executors decided to have a new survey, doubtless to correct any errors in prior ones, and to define the limits of the allotments of the various occupiers. As appears from some of the certificates of the executors (*m*), this step had been contemplated so early as 1833, and was commenced in 1835, at least, for certificates in that year stated that formal title-deeds would be given "when the survey of the settlement shall have been completed." This was being made by Mr. George Taylor, and the result of his labours appears in the elaborate plan drawn up by him, and in the monumental B, which may not inaptly be styled the Red River Domesday Book. The original plan has disappeared, in that mysterious manner which marks the fate of Red River records. The Company assures the writer it has not got it ; the Department of the Interior says it is not at Ottawa ; the Dominion Lands agent at Winnipeg, it is not in his office ; and so does the Commissioner of Dominion Lands in the same city. A copy, however, is to be found in the Commissioner's office, and there is also one in the Interior Department at Ottawa. The

(*m*) *Ante*, p. 48.

inscription on the map in Winnipeg is as follows: "Plan of the Red River Colony, copied from that in the possession of the Hudson Bay Company. Surveyed in 1836-7-8. Scale 50 chains to an inch." There is no name to it, but it is universally acknowledged that it is the work of Mr. George Taylor⁽ⁿ⁾. The plan shows the settlement belt, on the Assiniboine River, from Red River to the westerly line of St. Francois Xavier parish, nearly; and on Red River, from near the present town of Selkirk to Lot 208 on the east side, and to Lot 53 on the west side, of the parish of St. Norbert, both inclusive. The numbers on the plan are identical with those in Register B. There are 1542 lots in all, and the numbers begin on the west side of Red River in St. Clement's parish, running southerly; those on the east side of the river run northerly.

In August, 1869, preceding the Transfer to Canada, Lieut.-Colonel J. S. Dennis, on behalf of the Dominion Government, arrived at Fort Garry, and the actual field-work was begun in September at Pembina by a series of observations for latitude to determine the position of the 49th parallel; "these observations placed the boundary-line between the United States and the territories about two hundred feet further north than that determined some years previously by General Pope of the United States army" ^(o). On the first of December, owing to the operations of Louis Riel and his rebels, field-work was finally stopped; Colonel Dennis's statement of the results of the survey up to that time shows a survey of the settled farms on the west side of Red River, and below the parish of St. John's, and up the Assiniboine on the north side

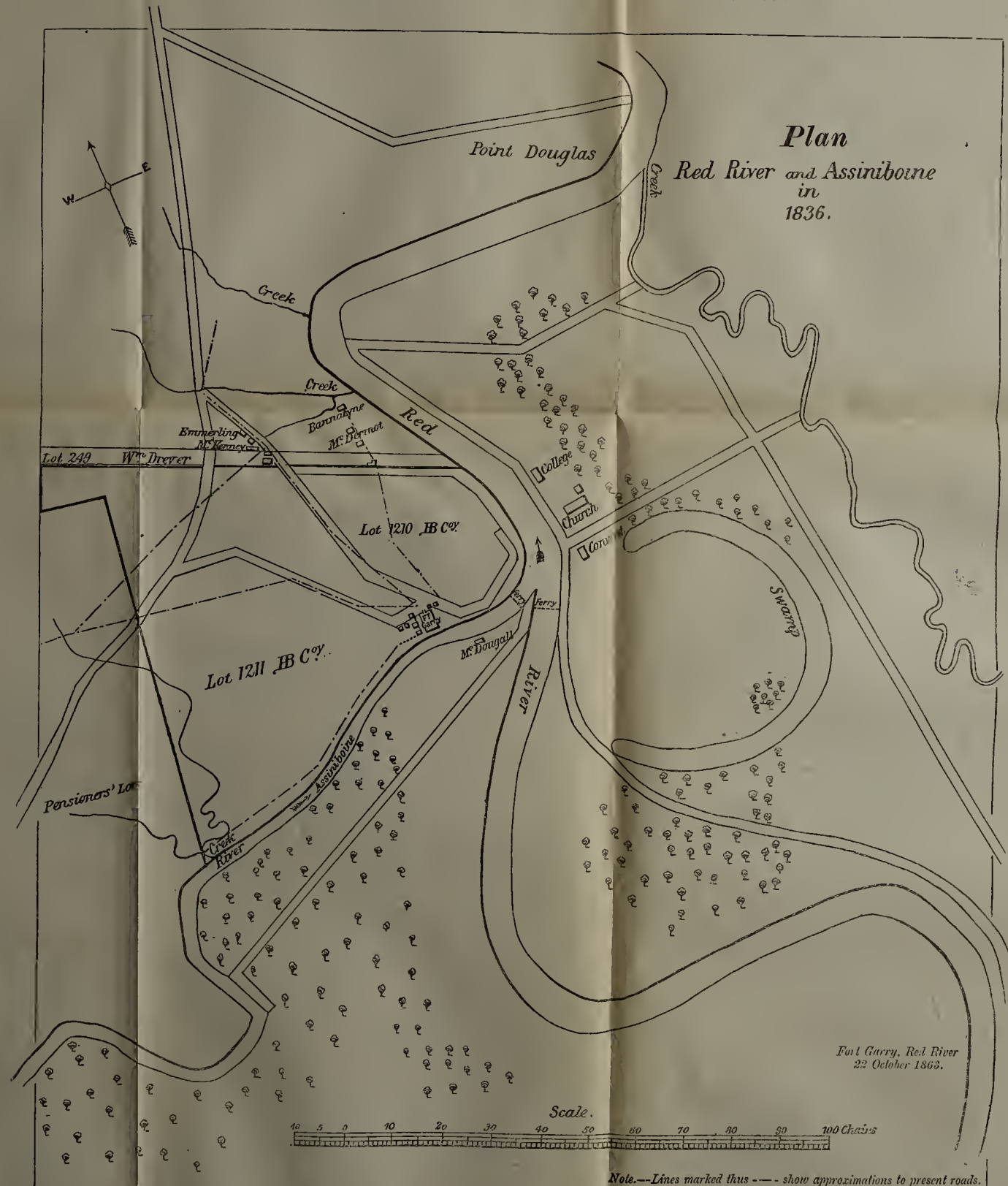
⁽ⁿ⁾ Mr. Taylor is long dead. His eldest son, George, is in the Saskatchewan district, and carries the mail by stage from Prince Albert to Melfort, in the Carrot River country. For years after his father's death he preserved his books and papers and a map of the Colony. But one evil day his house took fire when every one was away, and all these precious records were burnt. Mr. Taylor is about sixty years of age.

^(o) Dennis, *supra*.

between Fort Garry and Silver Heights (or a little beyond the latter near Sturgeon Creek), ascertaining the actual boundaries and position of buildings, situation of roads, and traverse of river in front, 20,000 acres. Under the heading "Office Work" he states that he had prepared, *inter alia*, "one plan on scale of 60 chains to an inch, showing the Hudson's Bay Company's grants on Red and Assiniboine rivers, as copied from their maps, and also showing where the township exteriors, according to the system decided upon, will intersect the same;" and "Two finished tracings of Hudson's Bay maps, showing grants so far recorded." One would almost think that one of these maps must have been Kemp's survey, and the other Taylor's. What has become of these copies sent to Ottawa by Colonel Dennis? Further, what has become of the originals? The present inquiry is not concerned with the subsequent surveys of the Dominion Government, the official maps of which can be readily obtained from the Department of Interior. Should any one care to pursue the subject further, full particulars will be found in Mr. Dennis's *Short History*.

In the Dominion Land Office at Winnipeg will be found three volumes of "Surveyor's Reports of Parishes," by consulting which may be found, generally, the numbers of the lots of the Dominion survey which correspond to those of Taylor's survey, though in a number of instances the Dominion lots are much larger than Taylor's, arising almost always from the fact that when the Dominion surveyors found a settler in occupation of three, say, adjoining Taylor's lots, they would enter them in their survey as one large lot. This accounts for the variation in size of the lots of the present survey.

Mr. Taylor's plan cannot be reproduced here on a scale that would be of practical utility. To face this page is a reproduction of an outline map showing that portion of the settlement surrounding the Forks of Red River in 1836, according to Taylor's survey. The original of this map is in



Plan
Red River and Assiniboine
in
1836.



Lot 249 Wm Dwyer

Emmerling
Mc Kenney

Barrington
Mc Dermot

Lot 1210 JB Coy

Lot 1211 JB Coy

Pensioners' Lot

College

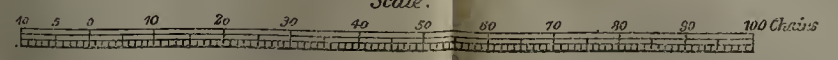
Church

Donation

Ferry

Mc Dougall

Scale.



Fort Garry, Red River
22 October 1863.

Note.—Lines marked thus --- show approximations to present roads.

the Provincial Library at Winnipeg. The later date in lower right-hand corner, and the note referring to the dotted lines, were made by some one in the employment of the Company, probably either Mr. Fortescue or Mr. Hargrave; certain of the names are also filled in by them, such as "Wm. Drever," "Emmerling," "Bannatyne," "McDermot," "McKenney," "McDougall." The words "Pensioners' Lots" are probably of a still later origin, for these allotments, as has been seen, extended almost to Fort Garry. The map is not a very satisfactory one, as the information it gives is meagre, but it is the oldest one that has come to light, so merits consideration on that ground. All the land on the west side of Red River is in the limits of the present city of Winnipeg; a considerable portion of that on the east side is now the town of St. Boniface, the Roman Catholic settlement since 1818.

The foregoing is all the information, practically, that can be gleaned in regard to the early surveys of Red River.

Now as to the records. These are meagre enough. The absence of those prior to 1822 has already (*p*) been accounted for, they were wantonly destroyed in that year by Alexander McDonell, Governor of Assiniboia, surnamed the "Grasshopper" Governor. Any one who knows what a visitation of grasshoppers means will appreciate the significance of this title; nothing could be more indicative of the odium in which he was held. When the Council of Assiniboia was established in 1835 by the Hudson's Bay Company, its minutes were regularly kept in folio volumes. The last of these, only, can now be found; it is in the Provincial Library at Winnipeg, and begins on March 14, 1861, ending at the time of the occupation of Fort Garry by the rebellious half-breeds in 1869. The fate of the prior volumes is a mystery; it is the more regrettable because they would throw light on one of the most interesting periods in the history of Manitoba. The

(*p*) *Ante*, p. 21.

same remarks apply to the records of the General Quarterly Court, which, only from November 21, 1844, will be found in the Provincial Library. These are very well kept, and give much valuable information; some of the trials are very interesting; not only the pleadings, such as they were, are given, but also the various witnesses, their evidence, the names of the jury and of the presiding magistrates and officials. The foregoing records derive their value from an historical, not a practical, standpoint. In this they differ materially from the "Domesday Book," or Red River Register B, which, or the statutory copies thereof hereafter mentioned, are frequently consulted. This register is in the immediate custody of the Land Department of the Company at Hudson's Bay House, Winnipeg, and lies in the vault in the basement. It is a ponderous tome of stout brown pigskin, bound with brass clasps, and stamped on each cover with the arms of the Company in gilt, and the words, "Red River Settlement, Register B." It is ruled into a number of columns with printed headings, running right across each double page as in the note (q) which shows the double open page on a reduced scale. The original writing is that of Mr. Nathaniel Logan (r), though subsequent entries are in various hands, and the book is at least as old as 1851, and probably older. Several

(q)

No. of Lot.	NAME.	Folio of Register.	Actual Measurement of Lot.			Acres Granted by Earl of Selkirk.	
			Acres.	Roods.	Poles.	Gratis.	Payable.

(r) *Ante*, p. 69.

No. 62: Alexander Sabiston 61ac. 2r. 24p. "Lower 2 chains transferred to Alexander Sabiston, jr., on condition that he be not allowed to sell during his lifetime."

No. 77: 292ac. Church Missionary Society, gratis from the Company, June 1, 1831.

No. 196: Frog Plain, 314ac. Granted gratuitously by Governor Colville to Alexander Ross and other Trustees of the Presbyterian Community of Red River Settlement.

No. 575: Thomas Halcrow, 69ac. 19r.; from the Earl of Selkirk, 1830-31, of which 50 were paid for, balance gratis.

No. 745: "The Superior of the Sisters of Charity (10ac. 1. 20), sold to her by Widow Ducharme. Granted by Lord Selkirk to Louis Ostertag, one of the De Meruons, and by him to Bishop Provencher."

Similar entries in next 8 lots.

No. 903: "Catholic Mission. Held by grant from the Earl of Selkirk," 10,392ac. 2r. 24p., gratis.

In the cases of *Keating v. Moises* (s), Mr. McTavish, the accountant of the Company at Fort Garry between 1860 and 1870 (t), stated that he had reasons for questioning the authenticity of some of the entries in the register. "There are entries in that book which were not in it formerly. What I mean is this; there are entries in that book which were made by parties connected with Riel's [Rebel] Government." It was out of the custody of the Company from

(s) *Ante*, p. 68.

(t) In the case of *Sinclair v. Mulligan*, tried at Winnipeg in January, 1886, Mr. McTavish gave further evidence in regard to Register B. "I was in the employ of the Company from 1857 to 1881 in almost every capacity, from apprentice clerk up to district manager or chief factor. It was my duty to look after the register from about 1860 until 1870."

November, 1869, until April or May of 1870; during that time fraudulent entries were made by W. B. O'Donohue, a member of the Provisional Government, who assumed the charge of it and other public documents. An instance of such tampering would be found in the case of Lot 1212, where a transfer is recorded by Madame Noline to Joseph Poitras, as of date of October 24, 1868; this is a forgery in the handwriting of O'Donohue. To brand it as such, Mr. McTavish made an entry, "Null. Not made with the authority of the H. B. C.—J. H. McTavish." In the summer of 1870, after the troops came to Fort Garry, the Company regained possession of the register. After the Transfer, some few entries might have been recorded in it; as Mr. McTavish put it, "I might have made transfers in this book after it came back into my possession, and there was nothing to prevent the holders [the Company] making any entry they chose in it. This was the only official record book of land transactions during the time the Council of Assiniboia were the Government of this country" (*u*). The original entries in Register B were made, says the same witness, in *Keating v. Moyses*, "from the old Hudson's Bay entries which were in quarter folio, and they were made by him who got up this book, and his entry was recognized by the Hudson's Bay Company. . . . I don't know what became of the old books; I rather fancy they are in the hands of the Department of the Interior. The Company say they haven't got them. . . . This book took the place of the old books, and was made for the purpose of showing the title, and has been used by the Company ever since." The object of the heading "Acres granted by Lord Selkirk," was to distinguish between those who derived title direct from the Earl before he reconveyed to the Company, and those who derived from the Company after that event.

Though in 1883 the Company said that it had not got

(*u*) Council established in 1835. Mr. McTavish is mistaken in this statement, as will later appear.

the old records from which Register B was made up, a statement repeated to the writer last year, yet he was fortunate enough, after a persistent search, to discover them on the 27th of October, and they are now in case No. 1, in the Company's warehouse No. 4, on the north bank of the Red River, and are indexed as numbers 64 and 65. They should rather be described as small folio volumes, half-bound in faded red leather. They are labelled in writing as follows:—

Mem ^o Respecting Grants of land in Red River Colony, No 1.

They record grants of land by Lord Selkirk and the Company in a fashion very similar to Register B already described, but the headings, which differ slightly, and lines are filled in by hand, not printed. The writing is very similar to, if not identical with, that of B. The great distinction is that the method of arrangement is not by consecutive number of lots, but alphabetically according to the grantees' names. Thus the three first grantees are Joseph Adam, George Adams, and Pierre Allard, receiving lots Nos. 379 (100 acres), 168 (50 acres), and 862 (50 acres) respectively. These numbers correspond with those in Register B, so it is probably the original record of Taylor's survey. The three grants cited are stated to be from the Company, May 1, 1835, April 20, 1835, and April 6, 1835. It will be remembered that in a prior chapter (*v*) it was stated that, in default of better evidence, the date of the reconveyance by Lord Selkirk to the Company would be taken to be 1836, but if these entries are accurate as to dates, and not made regardless of a wish to strictly distinguish between the grants of the Earl and the Company, the assumption would be that the reconveyance was made prior to the earliest of these grants,

(*v*) *Ante*, p. 19.

i.e. April 6, 1835. Volume 1 contains names A to N, volume 2 the rest of the alphabet; the pages are not numbered. The dates of grants range from November 10, 1830, Lot 571, 50 acres to John Hourie, senior, by Lord Selkirk, to Lot 98, 25 acres, from the Company to James Johnstone, on January 6, 1840, *i.e.* in the handwriting in which nearly every entry is recorded: but there are two later grants interpolated in a different hand, one to William Donald, jr., of Lot 30, 93 fractional acres, on May 2, 1843, at 7s. 6d. per acre; and the other, the latest, to François Boudron, Lot 320, 65 fractional acres, by the Company, on February 5, 1844, valued at £7 15s. 0d. The inference from this would be that Register B is at least as old as 1844.

Most of the grants bear date in April, 1835, but a number were made on April 15, 1839; for example, the Widow Kennedy, from Lord Selkirk, of Lot 491, 50 acres. This shows, as above suggested, that these dates cannot be relied on with certainty, for the colony had passed out of the possession of the deceased Earl's executors at least three years before. The prices range from 5s., 7s. 6d., 10s., to 12s., 6d. per acre. In the "Remarks" are recorded transfers from one party to another, and other information, such as the making of payments; in some cases no date of a grant is given, nor a price, nor from whom derived.

Names and particulars appear in these volumes which are not noticed in B; for example, compare the entries in regard to Alex. McLean and Lots 220 and 632, and John McLean, Lots 221 and 633. In B Alex. McLean is not mentioned in connection with Lot 220, nor does the name of John McLean appear at all. Apparently in B the intermediate grantees were not recorded, only the owner at the time of the compilation.

In an official report made by the late Chief Justice Wood, of Manitoba, to the Department of the Interior, on a case (*w*)

(*w*) Quoted in *A Manual of the Law of Registration of Titles to Real Estate in Manitoba, etc.* By L. W. Coutlée. Toronto, 1890.

submitted to him under the Dominion Lands Act, he stated that the register, "as containing a *connected* history of the changes and transfer of land," was "wholly unreliable." No one at all familiar with this record would claim for it any such properties; it shows on the face of it that it is not a *connected* history of any of the lots therein mentioned, but it is strong *primâ facie* proof of ownership in fee at a specified time. This is the view now entertained by the best authorities, and acted upon by the Government.

The expression "acres granted" either by the Earl or the Company conveys not the slightest intention of a limitation to a lease; according to a well-known rule of law, the presumption of the greater estate is in favour of the grantee. If it had been intended to lease the land, that word would have been used. As was pointed out by Mr. (now Chief Justice) Justice Taylor in 1883 (*x*), the memorandum "does not contain particulars from which it could be treated as an agreement for a lease; for instance, no term is mentioned for which the grantee was to hold the land." As has been seen in Chapter IV., the view taken by the Department of Justice is that "the word 'grant' in the entries may be considered to afford an indication that the intention was to grant a fee simple."

In regard to Register B, it only remains to be said that two copies of it are in existence, one in the Department of the Interior at Ottawa, and the other in the Land Titles Office at Winnipeg. The Manitoba Government, recognizing the great importance of this record, authorized at its first session, by statute, "an act to make valid a certain copy of the Hudson's Bay Company's plans of survey and for other purposes," the making an exact copy of the register. This was done by Messrs. W. N. Kennedy and Frank I. Clarke, and their affidavit of verification, dated January 7, 1874, will

(*x*) *Keating v. Moises*, 2 Man. R. 48.

be found on the back of the copy in the Land Titles Office, together with a certificate of Lieut.-Governor Morris. The work was well and carefully done, even the faintest pencil-marks being faithfully reproduced. This attested and statutory copy is received in all courts as evidence where the original would be so received.

Register A is in Government House, Winnipeg, and is a thick folio volume, likewise bound in brown pigskin and fastened with two brass clasps. It is much smaller than B, and is not stamped with the Company's arms, as it belonged to the executors of Lord Selkirk, and was compiled by them, though there is no particular date assigned to it. It is lettered on the front cover, and back, "Register Book A," and was made by Bailey, Surgey and Blight, 89, Cornhill, London. It is not a register of lands, but of documents relating to the settlement. The first thirty-eight pages alone are utilized, and of these No. 35 is blank.

Document No. 1 is a copy of the conveyance from the Company to Lord Selkirk, June 12, 1811. This will be found in Appendix B. It occupies pages 1-13 inclusive, the last three and a half being taken up with affidavits of due execution, certificates, etc. To face page 9 is a copy of a map, beautifully executed, of the territory granted, on a large sheet folded up, more than twice as big as an ordinary page of the register. A reduced copy of this map will be found elsewhere in this volume.

Document No. 2 is a copy of the agreement of July 18, 1817, between Lord Selkirk and the chiefs of the Saulteaux Nation, given on page 12 of this book. This agreement occupies pages 14 and 15, and to face the latter page is a map, also reproduced in this volume on a reduced scale; the portion conveyed is coloured blue in the register.

Document No. 3 occupies pages 16-22, and three-quarters of 23, and is a copy of Trust Disposition (dated at Edinburgh, August 20, 1806, and registered in the Books of the Lords

of Council and Session on April 28, 1850) from Thomas Earl of Selkirk to Sir James Hall, Baronet of Dunglass; Sir James Montgomery, Baronet of Stanhope; Captain Peter Halkett of the Royal Navy; Adam Maitland, Esq., of Dundrennan; and Dugald Stewart, Esq., Professor of Moral Philosophy in the University of Edinburgh. It relates to the disposition of his various properties in Scotland; "in the island of St. John's, *alias* Prince Edward's," consisting of lots or townships numbers ten, thirty-one, thirty-two, fifty-seven, fifty-eight, sixty, sixty-two, half of twelve, one-third of fifty-three, and one-third of fifty-nine; in Upper Canada; and in the state of New York, being those "acquired by Henrietta Maria Colden, from William Constable, Esquire, of the city of New York, and by me from the said Henrietta Maria Colden, consisting of five thousand acres, or thereby, lying on the banks of Lake Ontario at the mouth of Great Salmon River." The Upper Canada lands are not specified, and the Red River lands not then acquired.

Document No. 4 comprises pages 23 (one quarter) to 30 inclusive, and is copy of a "Supplementary Trust Disposition and Settlement," executed by the Earl at Edinburgh, on April 28, 1820, in favour of "John Halkett, of Seymour Place, Curzon Street in the Parish of St. George's, Hanover Square; Andrew Colville, of Ochiltree, and of Crommie in the county of Fife, and of Leadenhall Street in the City of London, Esquire; Peter Wedderburn, of Islabank in the County of Forfar, Esquire; and James Wedderburn, Esquire, His Majesty's Solicitor-General for Scotland, and the survivor and survivors of them accepting this trust to be trustees along with the said Sir James Hall, etc." This supplementary deed is stated to have been necessary, as the first one, "having been executed according to the law of Scotland only, is insufficient to convey to my said trustees the lands and tenements therein mentioned which are situated in the island of St. John's, otherwise called Prince Edward's Island, in the province of Upper Canada and

the United States of North America, or to convey a certain tract of land, Ossinioboia (*sic*), since acquired by me from the Governor and Company of Adventurers of England trading in to Hudson's Bay." This, and the foregoing document, comprise the Earl's will (*y*); he died at Pau on April 8, 1820.

Document No. 5, on page 31, is a certificate of Probate granted by Charles Archbishop of Canterbury, to the effect that on June 6, 1820, at London, was proved "the last will and testament, with a codicil thereto," of the Earl, and administration of his goods (sworn under £25,000), was granted to Sir James Montgomery, Bart., Andrew Colvile, and John Halkett, Esquires; power reserved to make a like grant to Sir James Hall, Bart., Peter Halkett, Adam Maitland, Dugald Stewart, and Peter and James Wedderburn, Esquires, when they or any of them should apply. The following note is added: "The effects have since been sworn under the sum of £35,000 (Sd.) H. Austis, Stamp Office, January 10, 1822."

Document No. 6, pages 32-34, dated July 1, 1820, is a copy of the renunciation of the trusts under documents 3 and 4 by Sir James Hall, Admiral Peter Halkett, Dugald Stewart, and Peter Wedderburn in favour of Sir James Montgomery, Adam Maitland, Andrew Colvile, John Halkett, and James Wedderburn, reciting the two trust dispositions, and that the four first-named parties had never acted thereunder.

Document No. 7, dated May 18, 1823, is on pages 35-38, and is a power of attorney from Sir James Montgomery, Adam Maitland *et al.* to Sir George Simpson and Robert Parker Pelly to sell and dispose of all or part of the District of Assiniboia; in terms it is in operation identical with the power, found on pages 43-46 of this volume, given to Governor Bulger.

So much for Register A, which is here described, and its contents made known, for the first time.

(y) *Vide* Appendix I.

Where are the volumes that should accompany it, and show the actual grants of land made by the Earl and his executors, as those made by the Company are shown in B? The writer for a long time felt convinced that these registers must be in existence, as they would be too valuable to destroy, and instituted inquiries in all directions without, for a long time, any success. In the course of conversation in October, 1893, with Mr. John^{nie} Balsillie, formerly of the Company's service, the latter stated that he well remembered two such volumes, and had made some notes in regard to them. Mr. Balsillie consulted his memoranda, and stated that he had been employed at Winnipeg, in the autumn of 1891, by Mr. Joseph Wrigley, the Commissioner of the Company, to arrange and index a large quantity of the books and papers which were in warehouse No. 4, near Main Street bridge. In the course of his work he unearthed two large land registers, in red leather binding, recording grants at Red River by the Earl of Selkirk and his executors, and giving other information relating to lands similar to that contained in Register B. He took an extract at the time from No. 2 of these volumes, which is now in the writer's possession. From this extract it appears that volume 2 was a record of "Deeds granted by Executors of Lord Selkirk up to 183-." From it it also appears that on page 399 of that volume was a "deed to Donald Gunn and John McDonald from exors. of Selkirk, dated Feby. 22, 1825, by Govr. Pelly of Assiniboia, agent for exors. of Earl of Selkirk." Other notes of Mr. Balsillie's go to show that the volume also contained a copy of the deed from the Company to the Earl, and his will "proved in London June 6, 1820." These two precious volumes were not included by Mr. Balsillie with the other books and accounts, which related to the fur trade, but, as relating to the work of the land department, put aside by him; nor, for the same reason, were they included in the catalogue of the books packed in the various cases and replaced in the warehouse, which catalogue is now in

the custody of Mr. W. S. Becher, the accountant. These land registers were set aside on a shelf in a back room of the Company's building on the corner of Main Street and Broadway; this room was back of a room well known to most Winnipeggers as having been formerly occupied by Mr. Herbert Swinford. The intention was that the Land Department should have volumes as forming part of their records, but each member of the Land Department informed the writer in October that he was positive he had never seen the volumes; the accountant is equally positive he never saw them, and the only thing certain about them is that they have disappeared. Thinking that they might have been placed with the account books in the old warehouse No. 4, the writer spent the greater part of a day in unpacking the numerous cases with the assistance of two men, but had to desist after a fruitless search. It is difficult to imagine that two such noteworthy volumes could have been mislaid; they must have been either stolen or concealed. The officials of the Company stated that they had every disposition to find these records, but it says little, very little, for the way the internal affairs of that corporation are administered, that the two most valuable records of Manitoba have disappeared, and no explanation of their disappearance has even been demanded by the powers that be. Publicity is given to this matter, for it is to be hoped that at the next General Court of the Company, some one of the directors who has the fair name of the ancient corporation sufficiently to heart, will cause such instructions to be given that the records will be found, for found they can be if they *must* be. This should be done first as a public duty, and, second, to remove the reproach of carelessness and apathy which rests on those in charge at Winnipeg. "The Company," as the Commissioner, Mr. Chipman, said to the writer, "has nothing to conceal." This is true, and if all the officials were as willing to assist as Mr. Chipman, the task of the Red River antiquary would be

easier, but they are not. The Company owes it to the public to afford every facility for historical research, and it should be borne in mind that these public records are the property in reality of the Government, for the Company sold out its rights of every nature to Canada, and all these volumes are but evidences of those rights, and should be in the possession of the Manitoba Government, and as free to public inspection as are the public documents of Great Britain in the Record Office in Fetter Lane. It should not be forgotten that Mr. Chipman was not in authority when these records disappeared, and is in no way responsible for their loss. But they should be recovered.

While on the subject of lost documents, it may be as well to mention the fact that it has long been a matter of current report that several bags of the Company's books and documents were lowered into the well in Old Fort Garry by the late J. H. McTavish, and never got out again; this during the taking of Fort Garry in 1869. The well was lined with stone, and about fifty-five feet deep, dry most of the year. It has since been filled up, and probably the volumes would yet be in a good state of preservation. It might be worth while for the local antiquaries to look into the matter, for though it does not do to give credit to every idle rumour, yet stranger things have happened to Red River books, to the writer's own knowledge (z).

As to the method of transfer of land in Assiniboia.

(z) In the summer of 1893 were discovered, in an old shed in the Hudson's Bay Reserve in the city of Winnipeg, back of the house then occupied by Mrs. Thomas Howard, some big folio volumes which formed part of the library of Mr. Peter Fidler, the surveyor above mentioned. Two of these were battered and incomplete portions of a four-volume edition of the *Cyclopædia of Arts and Sciences*, 1786, with Mr. Fidler's name on the title-page of each. The writer preserved the two title-pages, giving one to Mr. W. C. Fidler of St. Paul's Parish, a descendant, and keeping the other as an illustration of the strange preservation of what were in all probability among the first books that came to Red River.

Mr. J. H. McTavish, in his evidence in *Sinclair v. Mulligan*, tried at Winnipeg, in January, 1886, went fully into this point, confining his evidence from 1860-1870, in which years he stated Register B was in his sole custody at Fort Garry. He added, however, that the custom had been the same "as far back as the land books and papers connected with land transactions show." A verbal request on the part of the holder of the land desired to be transferred, made to the custodian of Register B, that he wished a transfer made or another name substituted for his in the Register, was deemed sufficient, and the custodian would make the required change therein, and the new name would be regarded as that of the holder of the land. If the writer did not give the instructions personally, a written request would have the same effect. No seals were used on these orders or agreements for sales of land. It was not necessary, in order to make an agreement for sale binding, that it should be recorded in the Register. "Contracts between parties were considered binding even if the contract were not entered in the Register, but that would be a question for the Court to decide; but transfers were considered good by the Court in those days even if the transfers were not recorded." The requests for transfer were in the simplest form; no particular operative words were required. They naturally varied somewhat, as a reference to the half-dozen loose ones still found between the folios of the Register will show, but the following was considered as effectual in *McKenny v. Spence* (a).

In the case of *Sinclair v. Mulligan* (b) it was held formally

(a) *Supra*, Manitoba Rep., *Temp.* Wood, 17.

Fort Garry, October 11, 1869.

William Cowan, Esq.

Please transfer to Thomas Spence Lot No. 242 in Point Douglas, as I have made over to him all my right title and interest in said lot, as well as in the adjoining Lot 241.

Your obedient servant,

(Sd.) WM. DREVER.

(b) *Supra*.

that the prevalent mode of transferring land, until the Transfer to Canada, was by verbal bargain and sale, "among the half-breeds and older white settlers, though later settlers undoubtedly brought with them and largely adopted the more satisfactory usage of evidencing such transactions by writing." The judgment given in this case is that of the ablest of Manitoba's judges (c). The whole of it will well repay perusal, but space forbids more than the following extract:—

These verbal transfers of land appear, from such records as I can find, to have been recognized in the courts. They have certainly continually been recognized by the Government in dealing with the issuing of patents in cases of both disputed and undisputed claims; they were uniformly recognized by the commissioners from time to time appointed by the Government to consider disputed claims to patents. As former judges of this Court have acted as commissioners, their adoption of this view is of the greatest importance.

I have no doubt that the method of transfer thus generally employed arose naturally, without strict attention to legal requirements, at a time when land seemed of little value, when possession was the all-important evidence of title, and when there was scarcely any knowledge of law or any attempt at administering law in the country, and when any such attempt was naturally of the rudest sort. But if something more substantial than customs must now be found upon which to uphold such a system, and if its recognition for so long a time under the Council of Assiniboia is not to be considered as having given to transferees under such circumstances, "civil rights existing under the Council of Assiniboia," I think that the want is supplied by the considerations I have mentioned. It is hardly to be supposed that when a lawyer of considerable ability such as Mr. Recorder Thom, who presided for some ten years over the General Court, evidently was, and when other lawyers subsequently occupied the same position, such a system would have continued undisturbed and unquestioned if it had not been felt that it had some substantial foundation in law.

I am of opinion both that such a mode of transfer was authorized by the laws in force in the colony, and that, having been recognized for so long a period, and so many transactions having taken place in accordance with it, it could not now be disturbed. I am of opinion, also, that the system must be considered as having been in force until the full introduction of the laws of England of a later date by the Legislature of Manitoba.

(c) The Hon. Mr. Justice Killam.

This judicial finding may fitly end the investigation of the questions arising in the course of the writing of this volume. It is hoped that any one who has followed the author in his facts and conclusions will agree with him that the colonists of Assiniboia, anticipating as they did the progress of settlement from the east by two generations, thereby contributing to the preservation of the western half of Canada to the British Crown to a degree not properly appreciated, may invoke to the fullest extent in their claims to their lands the ancient maxim :

“ QUI PRIOR EST TEMPORE, POTIOR EST JURE.”

[As a complement to this work, there will be found on
the succeeding pages an alphabetical List of the Grantees
in Assiniboia, extracted from Register B.]

LIST OF GRANTEES OF LANDS IN ASSINIBOIA UNDER THE
EARL OF SELKIRK AND THE HUDSON'S BAY COMPANY,
FROM 1812 TO JULY 15, 1870.

Name of Grantee.	No. of Lot in Register B.
Abandoned. (And <i>vide</i> Unoccu- pied)	290
Adam, J. Bpte., Sen.	889
„ Joseph	379
Adams, George	173
Adant, Joseph	393, 404
Adhemar, Patrick	428
Aideson, Joseph B.	1529
Aigle, Rouge, L'	1293
Allard, Ambroise	1458
„ Michel	1391
„ Octave	913
„ Pierre	862
Allerie, Joseph	925
„ Pierre	925
Anderson, Charles	110, 531
„ Henry	533
„ James, Sen.	44, 109, 511
„ James, Jun.	460
„ John	110, 111, 508
„ Thomas	108, 508
„ William	511
Androuis, Brother	271
Annal, John	112, 534, 535
Arcan, Joseph	1313, 1477
Arcus, David	38
Ashford, James	233, 234
Atkins, John	445, 450
Atkinson, —	1090
„ Henry	4, 1240

Name of Grantee.		No. of Lot in Register B.
Atkinson, James	...	1370
„ John	...	36
„ Thomas	...	1237
Ayotte, Gonzacque	...	253, 321, 1286, 1287
„ Pierre	...	254
„ Pierre Levalise, <i>dit</i> ,	...	271
Azure, Antoine	...	1385, 1391
BAILLIE, William	...	22
Ballendine, George	...	478
„ James	...	72, 448
„ John	...	158, 473, 474
„ William	...	57, 473
Ballosch, Louis	...	763
Balsillie, William	...	437
Bannatyne, B.	...	863, 864, 865, 866
Bannerman, Alexander	...	200, 637, 638
„ David	...	1105, 1106
„ Donald	...	201
„ George	...	202, 203, 220, 671, 672
„ Samuel	...	158
„ William	...	623
Barber, —	...	233, 234, 236, 237, 238, 239
Barnabé, Abraham Martin, <i>dit</i>	...	1467
Barron, Pierce	...	916, 917, 1227, 1228
Battosh(?), Louis	...	763
Bayiere, Joseph	...	860
Bayley, John	...	1459
Beads, John, Sen.	...	88
„ John, Jun.	...	104
Beauchamp, André	...	704, 706, 776, 778, 779
„ Charles	...	882, 883, 884
„ Pierre	...	375
Beauchemin, Benjamin	...	810, 811
Begg, Charles	...	420
Belanger, Abraham	...	358, 370
„ Louis	...	370
Bérard, François	...	714
Berard, Pierre, Sen.	...	689
„ Pierre, Jun.	...	411, 844
Bercier, J. Baptiste	...	1165, 1182
Berican, Joseph	...	311
Berland, Alexander	...	1428, 1429
„ Alexis	...	1430

Name of Grantee.	No. of Lot in Register B.
Berland, Pascal ...	1384
Bernier, Julien ...	722
Berrard, Louis ...	258, 711, 712
Bertin, Widow ...	253
Bird, C. J. ...	158
„ David (Widow of) ...	493
„ George ...	163
„ Henry ...	70
„ James ...	70, 117, 118, 158, 486, 547, 564, 565, 582
„ John James ...	70
„ Joseph ...	162
„ William ...	169
Bishop of Rupert's Land. (<i>Vide</i> Rupert's Land.)	
Bishop of St. Boniface. (<i>Vide</i> Catholic Mission and Taché, Alex.)	
Bissonet, Alfred ...	713
Birston, Magnus ...	12
„ William ...	471
Black, — ...	1078, 1088
„ Alexander K. ...	30, 145, 146
Blayonne, Louis ...	1287
Blondin, Pierre ...	759, 782
Bodreau, François ...	320
Boisuert, Louis ...	1390
Bonneau, Antoine ...	1453
„ François ...	1452
„ Pierre ...	1481
Borons, Charles ...	1494
Bouame, Alexis, <i>dit</i> L'Espérance	251, 981
Boucher, François ...	291
„ Isidore ...	918
„ J. M. ...	1212
Bourke, Edwin ...	955, 956, 1243
„ John ...	939, 940, 941, 942
„ John P. ...	1238, 1239
„ Walter ...	957, 958, 1238, 1240
Bousquet, Louis ...	765, 780, 802
Bouvet, Emile ...	243
„ François ...	243
„ Widow ...	243
Bouvier, — ...	1437
Bownain, — ...	961
Boyer, John Bpte. ...	1037

Name of Grantee.		No. of Lot in Register B.
Boyer, Pierre ...	...	1451
Braban, Augustin ...	...	268
Braconnier, Amable ...	...	312
Brasconnier, Baptiste, Sen.	...	1317, 1318
„ Baptiste, Jun.	...	1226, 1319
Brébant, Augustin ...	...	256
Breland, Pascal ...	...	1416
Bremner, Alexander ...	...	1282, 1361
„ Charles ...	...	1361
„ James ...	...	1361
„ Thomas ...	...	1283
„ William ...	...	1283, 1284
Brennan, Michel ...	...	1223
Brière, Baptiste ...	...	1417, 1445
Briston, Alexander ...	...	53, 469
Brown, Henry ...	...	159
„ James ...	...	158, 206, 966
„ John ...	...	90
„ Magnus ...	...	224, 225, 671, 1227
„ Thomas ...	...	159, 580
„ William ...	...	223, 1229, 1366, 1367, 1368
Bruce, Antoine ...	...	286
„ Baptiste ...	...	690, 691, 716
„ James ...	...	205, 635, 1248
„ John ...	...	259, 260, 262, 691, 921, 1108
„ Louis ...	...	777
„ Pierre ...	...	716
„ William ...	...	205, 206, 635
Bruneau, Thomas ...	...	321
Brunneau, François ...	...	679, 695
Brunner, William ...	...	978, 979, 980
Bryant, William ...	...	1040, 1041
Buckingham, William ...	...	1222
Budd, Henry ...	...	92, 522
Budge, John ...	...	165
Bunn, John ...	...	173, 174, 175, 176, 177, 587
„ Thomas ...	...	416, 417, 176, 588
„ William ...	...	177, 588
Burnell, Martin ...	...	1214
Butts, John ...	...	1227, 1228
CADOTTE, Baptiste ...	...	354
„ Joseph ...	...	812
„ Laurent ...	...	343

Name of Grantee.		No. of Lot in Register B.
Calder, George	...	10
„ James	...	129
Calder, William	...	113, 536
Cameron, Alexander	...	1345
„ Hugh	...	656, 657, 658, 1342, 1344, 1346, 1347
Campbell, Duncan	...	180, 1533
„ Neil	...	647, 648, 649
Canada, Charles	...	297
Canalier, Charles	...	226
Cantarrah, Modeste	...	1531
Caplette, Baptiste	...	936
„ Dennis	...	965, 1284
„ Joseph	...	928, 929, 935
„ Louis	...	939, 940
Cardinalle, Jacques	...	1414
„ Louis	...	892
Carrière, Alexis	...	878
„ André	...	822
„ André, Jun.	...	808
„ Audie	...	754
„ Daniel	...	755, 962
„ Elie...	...	319, 326, 925
„ Louise	...	875
„ Louison	...	702
„ Moyse	...	307
Carron, Antoine	...	703, 712, 784, 788
Catholic Mission	...	285, 322, 376, 377, 378, 380, 381, 382, 684, 685, 686, 687, 688, 689, 690, 691, 692, 694, 695, 698, 699, 700, 701, 704, 706, 707, 708, 709, 724, 725, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 741, 749, 750, 751, 752, 753, 903, 929, 1001, 1002, 1003, 1303, 1304, 1305, 1441, 1509
Catholic Schools, Brothers of	...	322, 694, 699
Chalifoux, Michel	...	1146
Chambertin, —	...	940
Champagne, Emanuel	...	275, 277
„ Manuel	...	861
Champaigne, Emanuel	...	854
„ Pierre	...	305
Charbonneau, Baptiste	...	680
„ Jean	...	291

Name of Grantee.		No. of Lot in Register B.
Charette, Baptiste	...	360
„ Joseph	...	357, 361, 363
Charity, Sisters of	...	730, 731, 732, 733, 734, 735, 736, 737, 738, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 1510, 1511
Cheté, Theophile	...	373
Church Missionary Society	...	77
Cire, François	...	1468
„ Jean	...	725, 741
Clarke, William	...	1530
Clauston, John	...	445
„ William	...	1342, 1343
Clouston, James	...	576
„ Robert	...	576
Cochrane, Rev. William	...	221, 493, 633
Cockran, Henry	...	597, 598
„ Thomas	...	597
„ William	...	129
Collier, Robert	...	914, 922
Colombe, François	...	845
Common, A.	...	224
Comptois, Etienne, Sen.	...	388, 400
„ Etienne, Jun.	...	386
„ Marcel	...	354, 400
Cook, Charles	...	578
„ Henry	...	578, 1250, 1251
„ Jarry	...	578
„ Jenny	...	578
„ Jeremiah	...	1215, 1331, 1332
„ Joseph	...	157, 578, 579
„ Kitty	...	578
„ Letty	...	155, 578
„ Nancy	...	578
„ Polly	...	578
„ Samuel	...	155, 578
„ Sophy	...	578
Corbett, Rev. G. O.	...	1046, 1047, 1346, 1348, 1349
Corrigal, James	...	86, 87, 94, 119, 503, 509, 532, 534
„ John	...	477
„ Peter	...	136, 562
Courchene, Antoine	...	387
„ François	...	858
Coutois, André	...	790, 1530
„ Widow	...	915

Name of Grantee.		No. of Lot. in Register B.
Cox, John	...	26, 441
Cremer, Charles	...	48, 465
Cromartie, John	...	132, 571
Cummings, Charles	...	98, 99, 527
„ Cuthbert	...	96, 97
„ Malcolm	...	93, 504
„ Robert	...	182, 584, 1534
Cunningham, James	...	1073, 1074, 1377
„ Widow	...	669
Cyr. (<i>Vide</i> Cire.)		
DAGNEAU, Joseph	...	1006
Dahal (<i>Vide</i> Dahl), Alexander	...	186, 591, 606
„ Peter	...	186, 606
Dahl, Alexander	...	185
Daigneau, Joseph	...	762
Damoulin, Pierre	...	1174
Daniel, Edward	...	420
„ George	...	419
„ Griffith	...	67, 483
„ Jacob	...	493
Dauphinais. (<i>Vide</i> also Duphinais)		
John	...	425
Dauphiné, François	...	855
„ Maximilian	...	407
„ Michel	...	717, 857
Davis, George	...	8, 9
„ J. Baptiste	...	908
„ Matilda	...	88
„ Widow	...	87, 512
„ William	...	912
Dease, Francis M.	...	697
„ John	...	332, 829
„ William	...	774
Decept, Michel	...	832
Defond, Joseph	...	552
Deganne, Joseph	...	412
De Lanoix, Louis Laferte	...	323
Delorme, Alexis	...	390
„ Furgeon	...	1465
„ Joseph	...	384, 385
„ Norbert	...	1160, 1161
„ Pierre	...	412
„ Urbain	...	1443, 1444, 1454, 1456, 1464, 1465

Name of Grantee.		No. of Lot in Register B.
Denierais, Baptiste (<i>dît</i> Lamalice)	344	
Dennais, Jean Baptiste	... 719	
Dennet, Andrew	... 553	
Dennet, William	... 552, 556	
Dennison, William	... 203, 1335, 1336, 1337	
Derocher, Baptiste	... 1407	
Derocier, Jean Bpte.	... 567	
Deschamps, Bpte.	... 1288	
„ François	... 295	
Descolteau, Joseph	... 348, 376	
„ Louis	... 365	
„ Pierre	... 408	
Desjardins, Antoine	... 794, 795, 1493	
„ Bpte.	... 331	
Desmarais, Baptiste	... 402, 541	
„ Charles	... 95, 507	
„ François	... 507, 834	
Donald, Charles	... 5	
„ William	... 30, 47, 48, 445, 463	
Doolan, Martin	... 921	
Drever, William	... 242, 249, 1212	
Dubois, Xavier	... 801	
Ducharme, —	... 946, 1302	
„ Antoine	... 381	
„ Baptiste	... 389	
„ Joseph	... 1018, 1316	
„ Louis	... 1291	
„ Oliver	... 686, 687	
„ Pierre	... 705, 878	
„ Widow	... 745, 746, 747, 748	
Duchesne, Moyse	... 295	
Dumas, Joseph	... 359	
„ Michel	... 318, 924, 927, 984, 985, 986	
Dumond, Isidore	... 285	
„ Sacasté	... 778	
Dumoulin, Pierre	... 1174	
Dunnet, William	... 143	
Dunord, Antoine	... 263, 264, 265, 272	
Duphinais, François	... 1396, 1397, 1398	
Dupuis, Baptiste, Sen.	... 272	
„ Baptiste, Jun.	... 272	
EASTER, John	... 110	
Edwards, John	... 421	

Name of Grantee.	No. of Lot in Register B.
Else, Henry ...	... 939, 940, 941
Emla, Joseph ...	... 370
Emlyn, Jacques, Sen. ...	... 301
„ Joseph ...	... 305, 369
Emlyn, Louis Solomon ...	... 301
„ Solomon ...	... 781, 789, 797
Erasmus, Henry ...	... 540
„ Peter ...	... 120, 515
FABIEN, ——— ...	... 814
Faille, Jouissant ...	... 255, 256
„ Pierre ...	... 256
Falcon, Baptiste ...	... 1131, 1132
„ Cuthbert ...	... 1144
„ Elie ...	... 1141
„ François ...	... 1130
„ Pierre ...	... 1130, 1136, 1406, 1432
Favel, Joseph ...	... 572
„ Palm Sanders ...	... 415
„ Samuel ...	... 548, 549, 550
„ Thomas ...	... 529, 551
„ William ...	... 528
Fiddler, Andrew ...	... 1218
„ Alban ...	... 1219
„ Charles ...	... 1220
„ Clement ...	... 1223, 1358, 1061, 1062
„ Cornelius ...	... 1235, 1236
„ Edward ...	... 1360
„ Peter ...	... 1365, 1374
„ Widow of George ...	... 1486
„ William ...	... 1185
Fidler, James ...	... 415
„ John ...	... 1, 1181
„ Thomas ...	... 1, 411, 413, 1063, 1362
Firth, Thomas ...	... 56, 57, 472
Fisher, Alexander ...	... 779
„ Ambroise ...	... 256
„ Henry ...	... 763, 764
Flammand, ——— ...	... 757
Flett, George (son of John) ...	... 438, 1093, 1094, 1095, 1374, 1375
„ Charles ...	... 621
„ Heirs of George ...	... 1242, 1243, 1244
„ James ...	... 475
„ John ...	... 199, 622

Name of Grantee.		No. of Lot in Register B.
Flett, Robert ...	...	1376
„ William ...	...	185, 477, 479
Folster, James ...	...	603
„ John ...	...	127, 445, 552
„ Thomas ...	...	6, 181
Folster, William ...	...	6
Forbes, John ...	...	145
Forbister, James ...	...	1379, 1380, 1381
„ John ...	...	88, 519, 1364, 1386, 1387
Fortier, Adoth ...	...	929
Foulds, John ...	...	922, 1217
„ Henry ...	...	922
„ Samuel ...	...	256, 1216
„ Thomas ...	...	256
Fournaise, François ...	...	1456
Fonseca, W. G. ...	...	228, 229, 240
Foys, Jouissante ...	...	292
Franks, James ...	...	1221
Fraser, Hugh ...	...	554
„ James ...	...	207, 614, 663, 664, 665, 666
„ James, Jun. ...	...	663, 664, 665, 666, 667
„ John ...	...	196, 220, 667, 668, 1099, 1100, 1101, 1102
Frobisher, Thomas ...	...	821
Frog Plain, The ...	...	196
Fur Trade, The ...	...	17, 18, 19, 1496, 1498
GADBY, William ...	...	154, 574
Gadowa, — ...	...	1312
„ Bpte. ...	...	1312
Galarneau, Joseph ...	...	559, 697, 757
„ Louis ...	...	707, 872
Gardiner, Thomas ...	...	415
Gardipe, J. B. ...	...	1428
Gardupuis, P. ...	...	1442, 1143
Garrioch, Gavin ...	...	156, 577, 1245
„ John ...	...	577, 1249
„ William ...	...	577, 1352, 1353
„ Widow ...	...	156
Garry, Lower Fort ...	...	20, 434
„ Upper Fort ...	...	1210
Gaudry, André ...	...	225, 237, 238, 239, 693
Gendron, François ...	...	793
Genton, Joseph ...	...	268
„ Maximillian ...	...	267

Name of Grantee.	No. of Lot in Register B.
George, Pierre ...	349
Geraid, Joseph ...	1435
Gervais, Bpte. ...	1449
Gilbeau, Joseph ...	1444, 1486
Gilbeault, Belonie ...	1491
„ Joseph ...	1443
Gladieu, Charles ...	1418
„ Pierre ...	717, 718, 805, 871
Gladieux, Pierre ...	807
Gladstone, William ...	416, 417
Gladu, Charles ...	1492
„ Pierre ...	804
Gonville, Antoine ...	1479
Goselin, Michel ...	362
Goudrie, Andre ...	225, 237, 238, 239, 693
Goulait, Elziadd ...	403
Goulet, Alexis ...	707, 717, 800, 874
„ Jacque ...	828
„ Roger ...	291, 754
Gowler, John ...	1327
„ Oliver ...	672, 1024, 1322, 1323, 1325, 1326, 1327
Grandbois, Alexis ...	761
Grant, Cuthbert ...	1439
„ J. Bpte. ...	849
Green, Stephen ...	1237
Grenville, Alex., Jun. ...	1515, 1516
Grounds, Indian Tenting ...	907
Gunn, Donald ...	33, 34, 452
„ George ...	1536, 1537, 1538, 1539
„ James ...	430
„ John ...	609
„ John, Jun. ...	417, 418
„ William ...	187, 1100, 1101, 1102, 1103, 1104
HALCROW, David ...	94
„ Thomas ...	149, 150, 575
Hall, Wm. B. ...	1019, 1020, 1021, 1022, 1023
Hallett, James ...	923, 1224, 1225
„ James, Jun. ...	1226
„ Julius ...	1224
Hallette, Henry, Sen. ...	225, 226, 1228
„ Henry, Jun. ...	225
„ Miss ...	225
„ William ...	226, 1236, 1388

Name of Grantee.		No. of Lot in Register B.
Hallette (Widow), Antoine	...	225
Hamilton, Daniel	...	587
Harcus, David, Sen.	...	37
„ David, Jun.	...	37
„ George	...	131
„ John	...	420
Harkness, Alexander	...	992, 993
Harkness, Andrew	...	919, 920, 921
Harper, James	...	447
„ John	...	193, 619
Harrison, Thomas	...	679
Harriot, John C.	...	416, 417
Hawes, Henry	...	516
Hay, Thomas	...	36
Hemmingway, Frederick	...	27
Henderson, Angus	...	600
„ Neil	...	588, 941, 942
„ Peter	...	122, 505
„ Samuel	...	183, 585
„ William	...	599½
Henri, Alexis	...	370, 371
Hodgson, John	...	93, 95, 121, 505
Hogg, Joseph	...	1285
Hogue, Amable	...	987, 1224
„ Antoine	...	990, 991
„ Louis	...	974, 975, 976, 977
„ Thomas	...	989
Hoole, Louis	...	1498
Houle, Antoine	...	781, 782
Hourie, George	...	139
„ John	...	9, 139, 571
„ Philip	...	139, 571
„ Robert	...	8, 566
Howse, Henry	...	560
Hudson's Bay Co.	...	221, 234, 249, 326, 415, 598, 650, 651, 783, 863, 864, 865, 899, 908, 918, 921, 1032, 1212, 1491, 1496, 1497, 1498
INDIAN Tenting Grounds	...	907
Inkster, James	...	216, 217, 636
„ James, Jun.	...	650, 651
„ John	...	215, 604, 1241, 1242
Irlande, Louis Rielle, <i>dît</i>	...	756
Irvine, George	...	1213

Name of Grantee.		No. of Lot in Register B.
Irvine, James	...	7
„ John	...	561, 931
Isbister, James	...	1263, 1264, 1265
„ John	...	154, 574
„ Thomas	...	74, 490
Isaac, Widow	...	785
Isham, James	...	543
JASSEAU, François	...	1415
Jeanaume, Solomon	...	369
Jeannot, Baptiste	...	300
Jeanvene, Pierre	...	367
Jeaunot, <i>dit.</i> Vestris	...	1426
Jerome, Martin	...	329, 330
Jeté, Theophile	...	373
Jobin, Ambroise	...	926, 988
Johnston, Henry	...	225
Johnstone, —	...	1212
„ George	...	80
„ James	...	94
Jolibois, Baptiste	...	401
Jollicoeur, Louis	...	276
Jordan, Patrick	...	4, 1328
Jouron, Joseph	...	852, 853
Juissaume, Laurente	...	694, 1540
KENNEDY, Philip	...	75
„ Widow	...	75, 491
Kenny, Edward	...	1227
Kippling, George	...	2, 542
„ John	...	2
„ Thomas	...	3
Kirkness, William	...	1014, 1214
Kittson, Norman W.	...	773, 774
Klyne, Michel	...	227
Knight, James	...	140, 569, 582
Knott, John	...	89
LABOUCAN, Joseph Lafournaise, <i>dit</i>	...	766
Lacerté, Raphael	...	887
Ladeaux, Baptiste	...	1466
„ Pierre	...	1483
Laderoute, Louisa. (<i>Vide</i> also	...	
Ladiroot and Ladiroute)	...	369

Name of Grantee.	No. of Lot in Register B.
Ladiroute, Oliver Seguin, <i>dit</i> ...	1491, 1493
Ladiroot, Filbert ...	273
„ Jean Louis ...	886
Ladirout, Joseph ...	361
Ladiroute, Joseph ...	279
„ Oliver, Seguin, <i>dit</i> ...	1491, 1493
Ladouceur, Bazil ...	280
Ladoire, James ...	1297
Laferté, Louis ...	791, 792
„ Pierre ...	720
Laferty, Louis ...	867
Lafishe, ——— ...	1303
Lafonde, Amable ...	308, 309
Lafontaine, Calix ...	1457, 1458
Lafournaise, Joseph, <i>dit</i> Laboucan	766
Lafrenier, Antoine ...	1476
Lafreniere, Antoine ...	1174, 1175
Lagomonière, Benjamin ...	682
„ Jean Baptiste ...	684
„ Laprarie ...	683
„ Romain ...	681
Lajeumonière, J. Bte. ...	743
Laliberte, Antoine ...	835
„ Pierre ...	836
Lamalice, Bte. Demierais, <i>dit</i> ...	344
„ Paul ...	906
Lambert, Antoine ...	311, 366
„ Michel ...	103, 525
„ Thomas ...	104
Lamirande, Alexis ...	352
Landrie, Joseph ...	788, 793, 871, 317, 321
Lane, Isidore ...	972
„ W. D. ...	1499, 1500
Lanoix, Louis Laferte de ...	323
Lapierre, Louis Brian, <i>dit</i> ...	250, 1529
„ Pierre ...	781
Lapine, Baptiste ...	756, 1488
Laplante, Baptiste ...	552, 717
„ Louis ...	288, 289
„ Oliver ...	279
Larance, Charles ...	688, 692, 723, 787, 788
„ Norbert ...	333, 352, 360
Larivie, Hyacinthe ...	917
„ Louis ...	323

Name of Grantee.	No. of Lot in Register B.
Larivière, François ...	796
Larocque, André ...	278
„ Baptiste ...	274, 1308, 1309
„ Charles ...	302
„ François ...	850, 1013
„ Joseph ...	760, 763
„ Louis ...	1315
„ Oliver ...	1448
„ Pierre ...	1447
Laronde, Louis D. ...	909
Larscque, François ...	1013
Lavallé, Michel ...	260
Lavallée (Widow) ...	281
Lavallee, Martin ...	257, 709, 713
„ Pierre, <i>dit.</i> Ayotte ...	271
Lavallie, Charles Matthew ...	1109
„ Jean ...	1114
„ Pierre, Martin ...	1116
Laverdure, Alexis ...	368
„ Joseph ...	1313
„ Pierre ...	1310, 1311, 1312, 1313, 1315
Laviolette, Baptiste ...	1153, 1154, 1155
„ Charles ...	321, 763
„ Charles, Jun. ...	1436
Leask, Catherine ...	83
„ Samuel ...	499
„ Thomas ...	84, 420, 500
„ William ...	152, 153
Leberge, Widow ...	797
Leblanc, Laurant ...	685
Ledoux, Pierre ...	1497
Leduc, Marie (Widow) ...	113
Legros, Antoine ...	830
Lelis, Patrick ...	913, 914
Lemay, Joseph ...	251, 368
Lemes, John Lea ...	73
Leneiller, Louis ...	1455
Lepine, Ambroise ...	272
„ Baptiste ...	272
„ ——— ...	785
Lerance, Baptiste ...	310
„ Bazil ...	306
„ Jean Baptiste ...	785, 786, 788
L'Esperance, Alexis Bouame, <i>dit.</i> ...	251, 981

Name of Grantee.	No. of Lot in Register B.
L'Esperance, Andrew ...	982, 983, 1111
„ Augustin ...	303
„ Joseph ...	796
Letendre, Joseph ...	913
Leveiller, Pierre ...	19, 1120
Lillie, Daniel ...	171, 172
Linklater, Andrew ...	83, 499
„ Hugh ...	89
„ John ...	84, 500
Livingstone, Donald ...	616
Livingstone, Neil ...	225, 616
Logan, Alexander ...	245
„ Kenneth ...	245
„ Robert ...	245, 678, 863, 864, 865, 866, 899
„ Robert, Jun. ...	1012
„ Thomas ...	228, 899
„ William ...	865, 866
Louaise, François ...	271
Loutit, Low ...	28
Lower Fort Garry. (See Garry, Lower Fort.)	
Lucier, Alexander ...	1152, 1153
„ Bazil ...	1150, 1151
„ Toussant ...	554, 557
Lussier, Amiable ...	1157
„ Joseph ...	1165, 1166
„ Toussaint ...	1167, 1168
Lyons, John ...	11
MACKINTOSH, Christopher ...	1054, 1055
Maguire, Philip ...	1217
Maitelle, J. Bte., Sen. ...	281, 282, 283
„ J. Bte., Jun. ...	280, 284
Malàtere, Alexis ...	1405
„ Joseph Nandon ...	1164
Mallay, Patrick ...	1228
Mally, Patrick ...	1227
Mankman, Joseph ...	142
Marchand, Benjamin ...	326, 699, 760
„ Cyril ...	326, 802, 879
Marion, François ...	773, 774, 869, 1480
„ Maximillian ...	404
„ Narcisse ...	298, 328, 702, 709, 710, 870
Marsailles, Baptiste ...	330, 910

Name of Grantee.			No. of Lot in Register B.
Martin, Abraham, <i>dit</i> Barnabé	...	1467	
Massey, Robert	...	1542	
Masson, François	...	860	
Matheson, Alexander	...	210, 606, 607, 611, 626	
„ Angus	...	212, 601, 608, 611	
„ Donald	...	220	
„ Hugh	...	601, 608, 611	
„ John	...	196, 210, 213, 214, 607, 625, 626, 639, 1064, 1085, 1086, 1087	
„ John Prichard	...	210	
„ Samuel	...	212	
„ William	...	640	
Matty, Captain	...	225	
Mill, Steam, Company	...	223	
Millar, Robert	...	150, 151, 577	
Minney, Charles	...	410	
Mission, Catholic. (<i>See</i> Catholic Mission.)			
Missionary, Church, Society	...	77	
Mitchell, John	...	242	
Monkman. (<i>See</i> Mankman.)			
Montrel, Louis	...	377	
Moor, George	...	447	
Moore, William	...	1033	
Moreau, Jean Baptiste	...	860, 873	
Morgan, Robert	...	1385	
Mornin, Antoine	...	372, 373	
„ Etienne	...	261	
„ J. Bte.	...	729	
„ Louis	...	334	
„ Louison	...	259, 260	
Morriseau, Joseph	...	1489	
Morrisette, Arsen	...	316	
„ Baptiste	...	1320	
„ Fas.	...	1061, 1062	
„ Norbert	...	1321	
Morrison, Angus	...	15, 613	
„ John	...	99, 527	
„ Murdock	...	667	
Mouvick, James	...	64, 65, 480, 481	
„ John	...	137, 563	
Mowat, Edward	...	52, 468, 494	
„ Thomas	...	58	
Muir, John, Sen.	...	29, 441	

Name of Grantee.		No. of Lot in Register B.	
Muir, John, Jun.	23
Mulligan, James	250, 260, 262, 297, 911, 912, 915, 916, 917, 918, 927
Munroe, Alexander	644, 645, 646
„ George	612
„ Robert	641, 642, 643, 650, 651, 652, 653
Murray, A. H.	16
„ Alexander	198, 590, 621, 1328, 1339
„ Donald	194, 548, 557, 559, 582
„ James	198
McBeath, Adam	1535
„ Alexander	595, 596, 617
„ Donald	590
McBeath, John	191, 192, 618
„ Morrison	189
„ Robert	190, 191, 595, 596
„ Roderick	189, 190
McCorrister, Alexander	449
„ Andrew	28, 49, 61, 443
„ Charles	35, 443
„ Henry	30, 444
„ James	35, 444, 670
„ John	454
McDermot, Andrew	228, 1092, 1093, 1214, 1226, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1281, 1282, 1531, 1540
McDonald, Adam	120, 476
„ Alexander	476
„ Angus	792
„ Donald	21, 59, 115, 116, 472, 474, 538
„ John	32, 33, 110, 451, 452, 531
„ John, Jun.	452
„ Kenneth	100, 104, 513
„ Murdock	443
„ William	187, 475
McGillis, Alexander	1188
„ Angus	1438
„ Daniel	1189, 1455
„ Duncan	1191
„ William	1190
McIntosh (Vide MacKintosh	
Christopher)	1054, 1055
McIver, Donald	592, 994

Name of Grantee.		No. of Lot in Register B.
McKay, Alexis	...	1490
„ Angus	...	1381
„ Robert	...	203, 1336
„ George	...	592, 593
„ Ignace	...	1174, 1195
„ James	...	59, 108, 592, 593, 594, 916, 917, 1071, 1072, 1262, 1301, 1302, 1316
„ James, Jun.	...	1252, 1253
„ John	...	593, 594, 1387
„ Neil ...	...	35
„ Robert	...	203, 625, 1336
„ Simon	...	378
McKenzie, Donald	...	1378
McKenzie, Hector A.	...	1256, 1257
„ Roderick	...	25, 440
McLean, Alexander	...	632
McLennan, Murdock	...	10, 104, 527
McLeod, Angus	...	426, 427
„ Donald	...	552, 1540, 1541
„ John, Jun.	...	436, 448
„ Louise	...	271
McMillan, William	...	775, 1260, 1261
McNab, James	...	676
„ John	...	422
„ Thomas	...	420, 421, 675, 676, 1268
McTavish, John H.	...	714
McRae, Duncan	...	446
„ John ...	...	586
NAPAI, Louison	...	910
Naud, Joseph	...	1164
„ Widow	...	1164
Naudt, Amable	...	698, 789, 790
„ Baptiste	...	314, 677
„ Boniface	...	782
Nault, Amable	...	241, 698
Neron, Jeremie	...	276, 322, 691, 699, 700, 744
Nolin, Augustin	...	739
„ Jean ...	...	1111, 1125
„	...	1212
Norman, J. B.	...	340, 341, 844
„ Michel, Sen.	...	341
Norn, Louis ...	...	1404
„ Samuel	...	158, 159, 580, 581

Name of Grantee.		No. of Lot in Register B.
Norn, Widow	...	158, 159
Norquay, Henry	...	180
„ John	...	51, 127, 467
„ Joseph	...	180
„ Mary	...	180
OLSEN, Olaf	...	1369
Omand, James	...	81, 497
„ John	...	1035, 1036, 1228, 1229
Osterlag, Louis	...	745
PAGE, E.	...	1422
„ Joseph	...	270, 1421
„ Xavier	...	1110
Pagé, Joseph	...	1421
Paget, Alexander	...	270
Pambrun, Peter C.	...	1261, 1262
Pangman, Peter	...	1402
Papin, Antoine	...	913
Paranteau, Joseph, Sen.	...	768
„ Norbert	...	831
„ Pierre	...	813
Parisien, Baptiste	...	296
„ Hyacinthe	...	399, 885
„ Joseph	...	296
„ Laventure	...	405
Park, George	...	555
„ James	...	555
„ John	...	133, 555
Parkes, Joshua	...	911, 969
Pateraude, Bte.	...	772, 780
Paterson, Malcolm	...	660, 661, 662
Patraude, Michel	...	772
„ Bte.	...	780
Paul, Baptiste	...	1469
„ Francette	...	1433
„ Louis	...	1145
„ Matthew	...	1434
„ Paul	...	1134
„ Paulette	...	1434
„ Pierre	...	1164
„ William	...	1138
„ St. Marte	...	1434
Peebles, James	...	58, 474, 502

Name of Grantee.		No. of Lot in Register B.
Peltier, Charles	...	1401
Perrault, Edward	...	315
„ Norbert	...	316
Pevier, Thomas	...	809
Petit, Louison	...	822
Piché, Joseph	...	1446
Pichée Louis	...	1145
Pillon, Antoine	...	815
Pioulx, Paul	...	796
Plain, Frog, The	...	196
Plains, White Horse, The	...	1433
Plante, Antoine	...	911
„ François	...	915
„ J. Bpte.	...	252
Plouffe, Antoine	...	353
„ Baptiste	...	798
Point, The	...	1119, 1132, 1142
Poitrass, Gab.	...	1407
„ Henry	...	1422
„ Joseph	...	1127, 1128, 1212
„ Pierre	...	1408, 1409, 1410, 1411, 1420
„ Widow	...	1423, 1424
Polson, Alexander	...	211, 625, 627
„ Angus	...	657, 659
„ Donald	...	211, 625, 626, 627
„ Hugh	...	185, 219, 586, 621, 623
„ John	...	672
„ William	...	211, 627
Pomond, Joseph	...	848
Porter, Alexander	...	950, 951
Pouffe, Louis	...	822
Prinneau, Joseph	...	327
Pritchard, Archibald	...	599
„ Hugh	...	602
„ John	...	191, 597, 598, 602, 620, 833
„ Richard	...	602
„ Samuel	...	602, 620
Proulx, Paul	...	796
Pruden, Arthur	...	1255
„ James	...	1254
„ John	...	1532
„ John Peter	...	209, 1247, 1254, 1255
„ Peter	...	71, 487
„ William	...	71, 487, 489

Name of Grantee.		No. of Lot in Register B.
RACETTE, Baptiste	...	299
„ George, Sen.	...	250, 781
„ George, Jun.	...	299
Raille, Joseph	...	721
Ray, Joseph,	...	763
Red Eagle, The	...	1293
Reid, Thomas	...	1037, 1038, 1039
Renville, François	...	393
„ Joseph	..	394
Reserve	...	15, 431, 432, 433, 435, 437, 439
Rhyne, Michel	...	769, 771
Richard, François	...	69
„ James	...	69
„ Louis	...	1173
„ Michel	...	1463
Richot, N. J., The Rev.	...	372, 373, 856
Richotte, Antoine Papin	...	294
„ Joseph	...	294
Rickards, James	...	937, 938, 1230
Rielle, <i>dit</i> Irelande, Louis	...	756
Rivard, Bapte	...	345
„ Pierre ...	...	345
„ Widow	...	264
Roberts, J. ...	...	921
„ John	...	914
Robertson, Andrew	...	40, 456
„ George	...	455, 1386
Robillard, ———	...	256
„ Baptiste	...	933, 934
„ Joseph	...	910, 915, 1011, 1230
„ Madam	...	1212
Rocheleau, Guillaume	...	816
Rocque, Cecil	...	847
„ Joseph	...	847
Rodway, Joseph	...	915, 1011, 1230
Roi, François	...	837, 838, 839
Roland, William	...	99
Rolindeau, Augustin	...	712
Roman, ———	...	432
Roman Catholic Mission.	(Vide Catholic Mission.)	
Roman Catholic Schools.	(Vide Catholic Schools, Brothers of.)	
Rose, William	...	158, 159

Name of Grantee.	No. of Lot in Register B.
Ross, Alexander ...	246, 247
„ Donald ...	25, 1161, 1162, 1517
„ George ...	60, 473
„ Hugh ...	1518
„ James ...	224, 225, 1096, 1097, 1098
Rouge, L'Aigle ...	1293
Roussain, Eustache ...	714, 868
„ François ...	862, 1300
Rowand, John ...	960, 1261
Rowland, Robert ...	158, 159, 580, 581
„ William ...	158, 159, 527, 580
Roy, Marcel ...	860
Rupert's Land, The Lord Bishop of	76, 166, 221, 222, 492, 672, 1231, 1232, 1347, 1348, 1349, 1350
ST. ARNAUD, Charles ...	360
St. Denis, François ...	1461
St. Denis, Jacques ...	347, 409
„ Jacquot ...	355
„ Paul ...	1177
„ Paulette ...	1413, 1506
St. Germain, Augustin ...	841
„ François ...	1457
„ Jacques ...	784
„ Joseph ...	824, 825, 829
Sabine, Herbert L. ...	1341, 1342
Sabiston, Alexander ...	62, 478
Salter, Richard ...	605
Sanders, David ...	424
„ William ...	45, 461
Sanderson, Roderick ...	28, 49
Sandison, David ...	94
„ George ...	91, 151, 152, 521, 573
„ Robert ...	218, 655
„ William ...	1357
Sangster, James ...	1231
Sans-gre, Bpte. ...	1450
„ Louis ...	880
Sans-regret. (<i>Vide</i> Sans-gre.) ...	
Saque, Joseph ...	1482
Sargent, Albert ...	703, 773, 774
„ Frederick ...	703
Sauvage, François ...	926, 930, 963
Sauvé, Joseph ...	324, 325

Name of Grantee.	No. of Lot in Register B.
Savoyard, Joseph ...	798, 799
„ Toussant ...	858
Sayer, Louis ...	1180
Sayhs, — ...	750
„ François ...	361, 853
Schiller, Ferdinand ...	1510, 1511
Schultz, — ...	235, 236
Scott, William ...	91, 523
Shultz, Dr. John ...	225
Seguin, Oliver, <i>dit</i> Laderoute ...	1491, 1493
Selkirk, Lord ...	158, 190, 625, 634
Sellwood, John W. ...	1222
Selter, Andrew ...	546, 547
„ George ...	129, 147, 148, 506, 520, 570
„ George, Jun. ...	130
„ James ...	105, 106, 108, 146, 506
Sharpe, Edward ...	910
Short, James ...	1484
Simpson, Sir Geo. ...	764, 1509
„ G. ...	221
„ Governor ...	805, 1509, 1491
Sinclair, Bakie ...	50, 466
„ James ...	111, 113, 247, 535, 536, 674, 1212
„ John ...	535, 536
„ Thomas ...	79, 495, 509
„ William ...	113, 125, 144, 536
Sisters of Charity. (<i>Vide</i> Charity.)	
Slater, James ...	158, 159, 580, 581, 1285
„ John ...	123, 124
„ William ...	158, 159, 580, 581
„ — ...	1146
Smith, Christopher ...	1032
„ John ...	431, 943, 944, 1212, 1246, 1298, 1299
„ John, James ...	38, 39, 453
„ John S. L. ...	447
„ Richard ...	40, 456
„ William ...	31, 446, 1324
„ William ...	170
„ William Robert ...	38, 453
Solomon, Antoine ...	311
Spence, Andrew ...	101, 112, 126, 127, 516, 535
„ Daniel ...	224, 225, 1329, 1330
„ George ...	13, 135
„ James ...	128, 224, 550, 935

Name of Grantee.		No. of Lot. in Register B.
Spence, John	...	14, 112, 113, 117, 127, 545
„ Joseph, Sen.	...	225, 663
„ Magnus	...	112, 117, 535
„ Thomas	...	242, 1211
Stephenson, William	...	514
„ William	...	1339, 1340, 1341
Stevens, Richard	...	41, 42, 457, 464
Stevenson, J.	...	1032, 1033
„ William	...	1030, 1031
Stewart, James	...	203, 913, 943, 944
Stodgell, Charles	...	953, 954, 1224, 1244
Sutherland, Alexander	...	231, 232, 634
„ George	...	197
„ James	...	96, 164, 514
„ John, Sen.	...	195, 214, 605, 231, 232, 589, 605, 632, 633, 635, 1065, 1066, 1067
„ Roderick	...	158, 159, 580, 581
„ William	...	97, 504, 631
Swain, —	...	420
„ James	...	450, 1281
„ John	...	1311
„ Robert	...	1286
„ Thomas	...	1285
Symieson, William	...	1026, 1027
TACHÉ, Right Rev. Alexander	...	1763
Tait, James	...	652, 653, 1048, 1049, 1050, 1051
„ John	...	82, 498, 562, 1231
„ Robert	...	214, 1251, 1278
„ William	...	208, 615, 652, 653, 1042, 1043, 1044, 1045
„ William, Jun.	...	673, 1256
Tate, James	...	102
„ Joseph	...	519
„ William	...	240
Taylor, George	...	27, 442
„ James	...	158, 159, 161, 580, 581
„ John	...	1354, 1355
„ William	...	160, 1333, 1334
Thibeault, François	...	295, 928
„ Louis	...	702
Thibert, Pierre	...	1169, 1170, 1487
„ Xavier	...	1170, 1171, 1172
Thomas, Charles	...	85, 501
„ Richard	...	43, 458, 459

Name of Grantee.		No. of Lot in Register B.
Thomas, Simon	...	1542
„ Thomas	...	583
„ William	...	583
Thompson, John	...	1425
Thomson, Andrew	...	68, 484
Thorne, George	...	1178, 1485
Thyfault, Bazil	...	770
„ L. ...	...	328, 777
Tiercot, Jeremie	...	967
„ Vital	...	971
Todd, William	...	1257
Tomison, William	...	1014
Tournaise, François	...	1456
Trade, The Fur, <i>q.v.</i>		
Trestram, James	...	1076
Trotier, Bazil	...	1462
Truthwaite, Jacob	...	46, 462
Turcotte, Vital	...	930
Turner, George	...	239
UNOCCUPIED LANDS	...	290, 338, 342, 346, 350, 351, 354, 355, 387, 391, 392, 396, 397, 398, 400, 406, 510, 518, 530, 580, 843
Upper Fort Garry	...	1210
VACANT LANDS. (<i>Vide</i> Unoccupied.)		
Vallee, Augustin	...	708
Valiquette, J. Bpte.	...	743, 744
Vandalle, Antoine	...	710, 823, 337
„ Antoine, Jun.	...	859
„ Joseph	...	395, 553, 556, 558
„ Pierre	...	313
Vaudrie, Jouissaint	...	723
„ Jouissaint, Jun.	...	840, 1176, 1306
Vermett, Alexis	...	338, 339
„ Antoine	...	858
„ Joseph	...	1514
„ Louis	...	336
„ Pierre	...	338, 339
Vermette, Joseph, Sen.	...	840, 1176, 1306
Versailles, Widow	...	811, 812
Vestris, François Jeannot, <i>dit</i>	...	1426
Villeneuve, François Xavier	...	918
„ Michel	...	713

Villra, Isabel ...	...	...	846
Vincent, John	...	...	167, 173
Vivier, Alexis, Jun.	...	...	1470
Vollar, James	...	...	54, 470
WARD, John ...	...	...	1122, 1123
Wark, William	...	...	158, 159, 580, 581
Waste Lands. (<i>Vide</i> Unoccupied.)			
Wellable, —	...	...	751
White, James	..	...	826
„ Joseph	...	...	336
„ Thomas	...	...	669
Whiteford, James	...	...	1121
White Horse Plains, The	...	...	1433
Whiteway, James	...	...	134
„ Joseph	...	...	134
Willette, Jacques	...	...	824
Wintzel, Alexander	...	...	812, 871
Wishart, James	...	...	158, 159, 580, 581
YANG, Jean ...	...	...	881
Young, James	...	...	457
„ Pascal	...	...	340, 341

SUPPLEMENTARY LIST.

[This loose sheet was found between the pages of Register B.]

List of names, with amounts due, transferred from the estate of the Earl of Selkirk, which do not appear in the Red River Settlement Register, viz.—

				£	s.	d.
Adams, George	...	...	...	20	19	5
Berner, Alexander	...	...	...	5	2	9
Corrigal, Peter	...	...	...	1	16	0
Ducharme, Pierre	...	...	...	9	4	8
Dunnett, William	...	...	...		13	11
Heckenberger, Henry	...	...	...	142	7	7
Henderson, Samuel	...	...	...	32	3	0
Kauffman, Ulric						
Laferte, Pierre						
Lageumoniére, Jean Bpte.						
Laroque, Baptiste						
Landrie, Joseph						
Leclere, Joseph						
Litendre, <i>dit.</i> Battosh Jean Bapte.						
Marchand, Gabriel						
Mission, Catholic						
McDonald, Angus						
McKay, Robert						
McKay, William						
Parisien, Hyacinthe						
Sandison, George						
Sanderson, William						
Schiller, Ferdinand						
Spence, Andrew						
Spence, James						
St. Germain, François						
Sutherland, Alexander Cameron						
—— John, @ (<i>sic</i>) Sen.						
—— Widow						
Versailles, Baptiste						
Whitford, James						
—— Peter						

These debts outstanding since before 1835.

APPENDICES.

APPENDIX A.

THE ROYAL CHARTER FOR INCORPORATING THE HUDSON'S BAY COMPANY.

CHARLES THE SECOND, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. To ALL to whom these Presents shall come, greeting: WHEREAS Our dear and entirely beloved Cousin, Prince Rupert, Count Palatine of the Rhine, Duke of Bavaria and Cumberland, &c. Christopher, Duke of Albemarle, William, Earl of Craven, Henry, Lord Arlington, Anthony, Lord Ashley, Sir John Robinson, and Sir Robert Vyner, Knights and Baronets, Sir Peter Colleton, Baronet, Sir Edward Hungerford, Knight of the Bath, Sir Paul Neele, Knight, Sir John Griffith and Sir Philip Carteret, Knights, James Hayes, John Kirke, Francis Millington, William Prettyman, John Fenn, Esquires, and John Portman, Citizen and Goldsmith of London, have, at their own great Cost and Charges, undertaken an Expedition for Hudson's Bay in the North-west Part of America, for the Discovery of a new Passage into the South Sea, and for the finding some Trade for Furs, Minerals, and other considerable Commodities, and by such their Undertaking, have already made such Discoveries as do encourage them to proceed further in Pursuance of their said Design, by means whereof there may probably arise very great Advantage to Us and Our Kingdom. AND WHEREAS the said Undertakers, for their further Encouragement in the said Design, have humbly besought Us to incorporate them, and grant unto them, and their Successors, the sole Trade and Commerce of all those Seas, Streights, Bays, Rivers, Lakes, Creeks, and Sounds, in whatsoever Latitude they shall be, that lie within the entrance of the Streights commonly called Hudson's Streights, together with all the Lands, Countries, and Territories, upon the Coasts and Confines of the Seas, Streights, Bays, Lakes, Rivers, Creeks and Sounds, aforesaid, which are not now actually possessed by any of our Subjects, or by the Subjects of any other Christian Prince or State. NOW KNOW YE, that We being desirous to promote all Endeavours tending to the publick Good of our People, and to encourage the said Undertaking, HAVE of Our especial Grace, certain Knowledge, and mere Motion, given, granted, ratified, and confirmed, and by these Presents for Us, Our Heirs and Successors, do give, grant, ratify and confirm, unto Our said Cousin Prince Rupert, Christopher, Duke of Albemarle, William, Earl of Craven, Henry, Lord Arlington, Anthony, Lord Ashley, Sir John Robinson, Sir Robert Vyner, Sir Peter Colleton, Sir Edward Hungerford, Sir Paul Neele, Sir John Griffith, and Sir Philip Carteret, James Hayes, John Kirke, Francis Millington, William Prettyman, John Fenn, and John Portman, that they, and such others as shall be admitted into the said

Society as is hereafter expressed, shall be one Body Corporate and Politique, in Deed and in Name, by the Name of The Governor and Company of Adventurers of England, trading into Hudson's Bay, and them by the Name of the Governor and Company of Adventurers of England, trading into Hudson's Bay, one Body Corporate and Politique, in Deed and in Name, really and fully for ever, for Us, Our Heirs and Successors, WE do make, ordain, constitute, establish, confirm, and declare, by these Presents, and that by the same Name of Governor and Company of Adventurers of England, trading into Hudson's Bay, they shall have perpetual Succession, and that they and their Successors, by the Name of the Governor and Company of Adventurers of England, trading into Hudson's Bay, be, and at all Times hereafter shall be, personable and capable in Law to have, purchase, receive, possess, enjoy and retain, Lands, Rents, Privileges, Liberties, Jurisdictions, Franchises, and Hereditaments, of what Kind, Nature or Quality soever they be, to them and their Successors; and also to give, grant, demise, alien, assign and dispose Lauds, Tenements and Hereditaments, and to do and execute all and singular other Things by the same Name that to them shall or may appertain to do. And that they, and their Successors, by the Name of The Governor and Company of Adventurers of England, trading into Hudson's Bay, may plead, and be impleaded, answer, and be answered, defend, and be defended, in whatsoever Courts and Places, before whatsoever Judges and Justices, and other Persons and Officers, in all and singular Actions, Pleas, Suits, Quarrels, Causes and Demands, whatsoever, of whatsoever Kind, Nature or Sort, in such Manner and Form as any other Our Lige People of this Our Realm of England, being Persons able and capable in Law, may, or can have, purchase, receive, possess, enjoy, retain, give, grant, demise, alien, assign, dispose, plead, defend, and be defended, do, permit, and execute. And that the said Governor and Company of Adventurers of England, trading into Hudson's Bay, and their Successors, may have a Common Seal to serve for all the Causes and Businesses of them and their Successors, and that it shall and may be lawful to the said Governor and Company, and their Successors, the same Seal, from time to time, at their Will and Pleasure, to break, change, and to make anew, or alter, as to them shall seem expedient. AND FURTHER WE WILL, and by these Presents for Us, Our Heirs and Successors, WE do ordain, that there shall be from henceforth one of the same Company to be elected and appointed in such Form as hereafter in these Presents is expressed, which shall be called The Governor of the said Company. And that the said Governor and Company shall or may elect Seven of their Number in such Form as hereafter in these Presents is expressed, which shall be called The Committee of the said Company, which Committee of Seven, or any Three of them, together with the Governor or Deputy-Governor of the said Company for the time being, shall have the Direction of the Voyages of and for the said Company, and the Provision of the Shipping and Merchandizes thereunto belonging, and also the Sale of all Merchandizes, Goods, and other Things returned, in all or any the Voyages or Ships of or for the said Company, and the managing and handling of all other Business, Affairs and Things, belonging to the said Company. AND WE WILL, ordain, and grant by these Presents for Us, Our Heirs and Successors, unto the said Governor and Company, and their Successors, that they the said Governor and Company, and their Successors, shall from henceforth for ever be ruled, ordered and governed, according to such Manner and Form as is hereafter in these Presents expressed, and not otherwise: And that they shall have, hold, retain and enjoy, the Grants, Liberties, Privileges, Jurisdictions and

Immunities, only hereafter in these Presents granted and expressed, and no other. And for the better Execution of Our Will and Grant in this Behalf, WE HAVE ASSIGNED, nominated, constituted and made, and by these Presents for Us, Our Heirs and Successors, WE DO ASSIGN, nominate, constitute, and make, our said Cousin, PRINCE RUPERT, to be the first and present Governor of the said Company, and to continue in the said Office from the Date of these Presents until the 10th November then next following, if he, the said Prince Rupert, shall so long live, and so until a new Governor be chosen by the said Company in Form hereafter expressed. AND ALSO WE HAVE assigned, nominated and appointed, and by these Presents for Us, Our Heirs and Successors, WE DO assign, nominate and constitute, the said Sir John Robinson, Sir Robert Vyner, Sir Peter Colleton, James Hayes, John Kirke, Francis Millington, and John Portman, to be the seven first and present Committees of the said Company, from the Date of these Presents until the said 10th Day of November then also next following, and so until new Committees shall be chosen in Form hereafter expressed. AND FURTHER WE WILL and grant by these Presents, for Us, Our Heirs and Successors, unto the said Governor and Company and their Successors, that it shall and may be lawful to and for the said Governor and Company for the Time being, or the greater Part of them present at any publick Assembly commonly called, The Court General to be holden for the said Company, the Governor of the said Company, being always one, from time to time to elect, nominate and appoint one of the said Company to be Deputy to the said Governor; which Deputy shall take a corporal Oath, before the Governor and three or more of the Committee of the said Company for the time being, well, truly, and faithfully to execute his said Office of Deputy to the Governor of the said Company, and after his Oath so taken, shall and may from time to time, in the Absence of the said Governor, exercise and execute the Office of Governor of the said Company, in such Sort as the said Governor ought to do. AND FURTHER WE WILL and grant by these Presents, for Us, Our Heirs and Successors, unto the said Governor and Company of Adventurers of England, trading into Hudson's Bay, and their Successors, that they, or the greater Part of them, whereof the Governor for the Time being, or his Deputy, to be one, from time to time, and at all Times hereafter, shall and may have Authority and Power, yearly and every Year, between the first and last Day of November, to assemble and meet together in some convenient Place, to be appointed from time to time by the Governor, or in his Absence by the Deputy of the said Governor for the Time being, and that they being so assembled, it shall and may be lawful to and for the said Governor or Deputy of the said Governor, and the said Company for the Time being, or the greater Part of them which then shall happen to be present, whereof the Governor of the said Company, or his Deputy for the Time being to be one, to elect and nominate one of the said Company, which shall be Governor of the said Company for one whole Year, then next following, which Person being so elected and nominated to be Governor of the said Company, as is aforesaid, before he be admitted to the Execution of the said Office, shall take a corporal Oath before the last Governor, being his Predecessor or his Deputy, and any three or more of the Committee of the said Company for the Time being, that he shall from time to time, well and truly execute the Office of Governor of the said Company, in all Things concerning the same; and that immediately after the same Oath so taken, he shall and may execute and use the said Office of Governor of the said Company, for one whole Year from thence next following. And in like Sort We will and grant, That as well every one of the above named

to be of the said Company or Fellowship, as all others hereafter to be admitted, or free of the said Company, shall take a corporal Oath before the Governor of the said Company, or his Deputy for the Time being, to such Effect as by the said Governor and Company, or the greater Part of them, in any publick Court to be held for the said Company, shall be in reasonable and legal Manner set down and devised, before they shall be allowed or admitted to trade or traffick as a Freeman of the said Company. AND FURTHER WE WILL and grant by these Presents, for Us, Our Heirs and Successors, unto the said Governor and Company, and their Successors, That the said Governor, or Deputy Governor, and the rest of the said Company, and their Successors for the Time being, or the greater Part of them, whereof the Governor or Deputy Governor, from time to time, to be one, shall and may from time to time, and at all Times hereafter, have Power and Authority yearly, and every Year, between the first and last day of November, to assemble and meet together in some convenient Place, from time to time to be appointed by the said Governor of the said Company, or in his Absence by his Deputy; and that they being so assembled, it shall and may be lawful to and for the said Governor or his Deputy, and the Company for the Time being, or the greater Part of them, which then shall happen to be present, whereof the Governor of the said Company, or his Deputy for the Time being to be one, to elect and nominate Seven of the said Company, which shall be a Committee of the said Company, for one whole Year from then next ensuing, which Persons being so elected and nominated to be a Committee of the said Company as aforesaid, before they be admitted to the Execution of their Office, shall take a corporal Oath, before the Governor or his Deputy, and any three or more of the said Committee of the said Company, being their last Predecessors, that they, and every of them, shall well and faithfully perform their said Office of Committees in all Things concerning the same, and that immediately after the said Oath so taken, they shall and may execute and use their said Office of Committees of the said Company, for one whole Year from thence next following. AND MOREOVER, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, WE DO GRANT unto the said Governor and Company, and their Successors, that when, and as often as it shall happen, the Governor or Deputy Governor of the said Company for the Time being, at any Time within one Year after that he shall be nominated, elected, and sworn to the Office of the Governor of the said Company, as is aforesaid, to die or to be removed from the said Office, which Governor or Deputy Governor not demeaning himself well in his said Office, WE WILL to be removeable at the Pleasure of the rest of the said Company, or the greater Part of them which shall be present at their publick Assemblies, commonly called, Their General Courts holden for the said Company, that then, and so often it shall and may be lawful to and for the Residue of the said Company for the Time being, or the greater Part of them, within a convenient Time, after the Death or Removing of any such Governor, or Deputy Governor to assemble themselves in such convenient Place as they shall think fit, for the Election of the Governor or Deputy Governor of the said Company; and that the said Company, or the greater Part of them, being then and there present, shall and may, then and there, before their Departure from the said Place, elect and nominate one other of the said Company, to be Governor or Deputy Governor for the said Company, in the Place and Stead of him that so died or was removed; which Person being so elected and nominated to the Office of Governor or Deputy Governor of the said Company, shall have and exercise the said Office, for and during the Residue of the said Year, taking

first a corporal Oath, as is aforesaid, for the due Execution thereof; and this to be done from time to time, so often as the Case shall so require. AND ALSO, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, WE do grant unto the said Governor and Company, that when, and as often as it shall happen any Person or Persons of the Committee of the said Company for the Time being, at any Time within one Year next after that they or any of them shall be nominated, elected and sworn to the Office of Committee of the said Company as is aforesaid, to die or to be removed from the said Office, which Committees not demeaning themselves well in their said Office, We will, to be removeable at the Pleasure of the said Governor and Company, or the greater Part of them, whereof the Governor of the said Company for the Time being, or his Deputy, to be one; that then, and so often, it shall and may be lawful to and for the said Governor, and the rest of the Company for the Time being, or the greater Part of them, whereof the Governor for the Time being, or his Deputy, to be one, within convenient Time after the Death or removing of any of the said Committee, to assemble themselves in such convenient Place as is or shall be usual and accustomed for the Election of the Governor of the said Company, or where else the Governor of the said Company for the Time being, or his Deputy, shall appoint. And that the said Governor and Company, or the greater Part of them, whereof the Governor for the Time being, or his Deputy, to be one, being then and there present, shall, and may, then and there, before their Departure from the said Place, elect and nominate one or more of the said Company, to be of the Committee of the said Company in the Place and Stead of him or them that so died, or were or was so removed, which Person or Persons so nominated and elected to the Office of Committee of the said Company, shall have and exercise the said Office, for and during the Residue of the said Year, taking first a corporal Oath as is aforesaid, for the due Execution thereof, and this to be done from time to time, so often as the Case shall require. And to the End the said Governor and Company of Adventurers of England trading into Hudson's Bay, may be encouraged to undertake, and effectually to prosecute the said design, of Our more especial Grace, certain Knowledge, the mere Motion, WE HAVE given, granted and confirmed, and by these Presents, for Us, Our Heirs and Successors, do give, grant, and confirm, unto the said Governor and Company, and their Successors, the sole Trade and Commerce of all those Seas, Streights, Bays, Rivers, Lakes, Creeks, and Sounds, in whatsoever Latitude they shall be, that lie within the Entrance of the Streights commonly called Hudson's Streights, together with all the Lands and Territories upon the Countries, Coasts and Confines of the Seas, Bays, Lakes, Rivers, Creeks, and Sounds aforesaid, that are not already actually possessed by or granted to any of our Subjects or possessed by the Subjects of any other Christian Prince or State, with the Fishing of all Sorts of Fish, Whales, Sturgeons, and all other Royal Fishes, in the Seas, Bays, Inlets, and Rivers within the Premises, and the Fish therein taken, together with the Royalty of the Sea upon the Coasts within the Limits aforesaid, and all Mines Royal, as well discovered as not discovered, of Gold, Silver, Gems, and precious Stones, to be found or discovered within the Territories, Limits, and Places aforesaid, and that the said Land be from henceforth reckoned and reputed as one of our Plantations or Colonies in America, called *Rupert's Land*. AND FURTHER, WE do by these Presents, for Us, Our Heirs and Successors, make, create and constitute, the said Governor and Company for the Time being, and their Successors, the true and absolute Lords and Proprietors, of the same Territory, Limits and Places aforesaid, and of all other the

Premises, SAVING ALWAYS the Faith, Allegiance and Sovereign Dominion due to Us, our Heirs and Successors, for the same to HAVE, HOLD, possess and enjoy the said Territory, Limits, and Places, and all and singular other the Premises, hereby granted as aforesaid, with their, and every of their Rights, Members, Jurisdictions, Prerogatives, Royalties and Appurtenances whatsoever, to them the said Governor and Company, and their Successors for ever, TO BE HOLDEN of Us, Our Heirs and Successors, as of Our Manor of East Greenwich in our County of Kent, in free and common Soccage, and not in Capite or by Knight's Service; YEILDING AND PAYING yearly to Us, Our Heirs and Successors, for the same, two Elks and two black Beavers, whensoever, and as often as We, our Heirs and Successors, shall happen to enter into the said Countries, Territories and Regions hereby granted. AND FURTHER, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs, and Successors, WE do grant unto the said Governor and Company, and to their Successors, that it shall and may be lawful, to and for the said Governor and Company, and their Successors, from time to time, to assemble themselves, for or about any the Matters, Causes, Affairs, or Businesses of the said Trade, in any Place or Places for the same convenient, within our Dominions or elsewhere, and there to hold Court for the said Company, and the Affairs thereof; and that also, it shall and may be lawful to and for them, and the greater Part of them, being so assembled, and that shall then and there be present, in any such Place or Places whereof the Governor or his Deputy for the Time being to be one, to make, ordain, and constitute, such, and so many reasonable Laws, Constitutions, Orders and Ordinances, as to them, or the greater part of them being then and there present, shall seem necessary and convenient for the good Government of the said Company, and of all Governors of Colonies, Forts and Plantations, Factors, Masters, Mariners, and other Officers employed or to be employed, in any of the Territories and Lands aforesaid, and in any of their Voyages; and for the better Advancement and Continuance of the said Trade, or Traffic and Plantations, and the same Laws, Constitutions, Orders and Ordinances so made, to put in Use and execute accordingly, and at their Pleasure to revoke and alter the same, or any of them, as the occasion shall require: And that the said Governor and Company, so often as they shall make, ordain, or establish, any such Laws, Constitutions, Orders, and Ordinances, in such Form as aforesaid, shall and may lawfully impose, ordain, limit and provide, such Pains, Penalties and Punishments upon all Offenders, contrary to such Laws, Constitutions, Orders and Ordinances, or any of them, as to the said Governor and Company for the Time being, or the greater Part of them, then and there being present, the said Governor or his Deputy being always one, shall seem necessary, requisite, or convenient for the Observation of the same Laws, Constitutions, Orders and Ordinances; and the same Fines and Amerciaments shall and may by their Officers and Servants, from time to time to be appointed for that Purpose levy, take and have, to the Use of the said Governor and Company, and their Successors, without the Impediment of Us, Our Heirs or Successors, or of any the Officers or Ministers of Us, Our Heirs or Successors, and without any Account therefore to Us, Our Heirs or Successors, to be made. All and singular which Laws, Constitutions, Orders and Ordinances, so as aforesaid, to be made, WE WILL to be duly observed and kept under the Pains and Penalties therein to be contained; so always as the said Laws, Constitutions, Orders and Ordinances, Fines and Amerciaments, be reasonable, and not contrary or repugnant, but as near as may be agreeable to the Laws, Statutes or Customs of this our Realm. AND FURTHERMORE, of our ample and abundant

Grace, certain Knowledge, and mere Motion, WE HAVE granted, and by these Presents for Us, Our Heirs and Successors, do grant unto the said Governor and Company, and their Successors, that they, and their Successors, and their Factors, Servants and Agents, for them, and on their Behalf and not otherwise, shall for ever hereafter have, use and enjoy, not only the whole, entire, and only Trade and Traffick, and the whole, entire, and only Liberty, Use and Privilege, of Trading and Trafficking to and from the Territory, Limits and Places aforesaid; but also the whole and entire Trade and Traffick to and from all Havens, Bays, Creeks, Rivers, Lakes and Seas, into which they shall find Entrance or Passage by Water or Land out of the Territories, Limits or Places, aforesaid; and to and with all the Natives and People, inhabiting, or which shall inhabit within the Territories, Limits and Places aforesaid; and to and with all other Nations inhabiting any the Coasts adjacent to the said Territories, Limits and Places which are not already possessed as aforesaid, or whereof the sole Liberty or Privilege of Trade and Traffick is not granted to any other of Our Subjects. AND WE of Our further Royal Favour, and of Our more especial Grace, certain Knowledge, and mere Motion, HAVE granted, and by these Presents for Us, Our Heirs and Successors, do grant to the said Governor and Company, and to their Successors, that neither the said Territories, Limits and Places, hereby granted as aforesaid, nor any Part thereof, nor the Islands, Havens, Ports, Cities, Towns or Places, thereof, or therein contained, shall be visited, frequented or haunted, by any of the Subjects of Us, Our Heirs or Successors, contrary to the true Meaning of these Presents, and by Virtue of Our Prerogative Royal, which We will not have in that Behalf argued or brought into Question; WE STREIGHTLY charge, command and prohibit, for Us, Our Heirs and Successors, all the Subjects of Us, Our Heirs and Successors, of what Degree or Quality soever they be, that none of them directly or indirectly, do visit, haunt, frequent or trade, traffic or adventure, by way of Merchandize, into, or from any the said Territories, Limits or Places, hereby granted, or any, or either of them, other than the said Governor and Company, and such particular Persons as now be, or hereafter shall be, of that Company, their Agents, Factors and Assigns, unless it be by the Licence and Agreement of the said Governor and Company in Writing first had and obtained, under their Common Seal, to be granted, upon Pain that every such Person or Persons that shall trade or traffick into or from any of the Countries, Territories or Limits aforesaid, other than the said Governor and Company, and their Successors, shall incur our Indignation, and the Forfeiture, and the Loss of the Goods, Merchandizes, and other Things whatsoever, which so shall be brought into this Realm of England, or any the Dominions of the same, contrary to our said Prohibition, or the Purport or true Meaning of these Presents, for which the said Governor and Company shall find, take and seize, in other Places out of our Dominions, where the said Company, their Agents, Factors or Ministers, shall trade, traffick or inhabit, by Virtue of these Our Letters Patent, as also the Ship and Ships, with the Furniture thereof, wherein such Goods, Merchandizes, and other Things, shall be brought and found, the one Half of all the said Forfeitures to be to Us, Our Heirs and Successors, and the other Half thereof WE do by these Presents clearly and wholly for Us, Our Heirs and Successors, give and grant unto the said Governor and Company, and their Successors. AND FURTHER, all and every the said Offenders, for their said Contempt, to suffer such other Punishment as to Us, Our Heirs and Successors, for so high a Contempt, shall seem meet and convenient, and not to be in anywise delivered until they, and every of them, shall become bound unto the said Governor for the time being

in the Sum of One Thousand Pounds at the least, at no time then after to trade or traffick into any of the said Places, Seas, Streights, Bays, Ports, Havens or Territories, aforesaid, contrary to our express Commandment in that Behalf set down and published. AND FURTHER, of Our more especial Grace, WE HAVE condescended and granted, and by these Presents for Us, Our Heirs and Successors, do grant unto the said Governor and Company, and their Successors, that We, Our Heirs and Successors, will not grant Liberty, Licence, or Power, to any Person or Persons whatsoever, contrary to the Tenor of these Our Letters Patent, to trade, traffick or inhabit, unto or upon any the Territories, Limits or Places, afore specified, contrary to the true Meaning of these Presents, without the Consent of the said Governor and Company, or the most part of them. AND, OF Our more abundant Grace and Favour to the said Governor and Company, WE do hereby declare Our Will and Pleasure to be, That if it shall so happen, that any of the Persons free, or to be free of the said Company of Adventurers of England trading into Hudson's Bay, who shall, before the going forth of any Ship or Ships appointed for A VOYAGE, or otherwise, promise or agree by Writing under his or their Hands, to adventure any Sum or Sums of Money, towards the furnishing any Provision, or Maintenance of any Voyage or Voyages, set forth, or to be set forth, or intended or meant to be set forth, by the said Governor and Company, or the more Part of them present at any publick Assembly, commonly called Their General Court, shall not within the Space of twenty Days next after Warning given to him or them, by the said Governor or Company, or their known Officer or Minister, bring in and deliver to the Treasurer or Treasurers appointed for the Company, such Sums of Money as shall have been expressed and set down in Writing, by the said Person or Persons, subscribed with the Name of said Adventurer or Adventurers, that then, and at all Times after, it shall and may be lawful to and for the said Governor and Company, or the more Part of them present, whereof the said Governor or his Deputy to be one, at any of their General Courts or General Assemblies, to remove and disfranchise him or them, and every such Person and Persons at their Wills and Pleasures, and he or they so removed and disfranchised, not to be permitted to trade into the Countries, Territories, and Limits aforesaid, or any Part thereof, nor to have any Adventure or Stock going or remaining with or amongst the said Company, without the special Licence of the said Governor and Company, or the more Part of them present at any General Court, first had and obtained in that Behalf, any Thing before in these Presents to the contrary thereof in anywise notwithstanding. AND OUR WILL AND PLEASURE is, and hereby we do also ordain, That it shall and may be lawful, to and for the said Governor and Company, or the greater Part of them, whereof the Governor for the Time being, or his Deputy to be one, to admit into, and to be of the said Company, all such Servants or Factors, of or for the said Company, and all such others, as to them, or the most Part of them present, at any Court held for the said Company, the Governor or his Deputy being one, shall be thought fit and agreeable with the Orders and Ordinances made and to be made for the Government of the said Company. AND FURTHER, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, WE do grant unto the said Governor and Company, and to their Successors, that it shall and may be lawful in all Elections, and Bye-laws to be made by the General Court of the Adventurers of the said Company, that every Person shall have a number of Votes according to his Stock, that is to say, for every hundred Pounds by him subscribed or brought into the present Stock, one Vote, and that any of those that

have subscribed less than one hundred Pounds, may join their respective Sums to make up one hundred Pounds, and have one Vote jointly for the same, and not otherwise. AND FURTHER, Of Our especial Grace, certain Knowledge, and mere Motion, WE DO for Us, Our Heirs and Successors, grant to and with the said Governor and Company of Adventurers of England trading into Hudson's Bay, that all Lands, Islands, Territories, Plantations, Forts, Fortifications, Factories, or Colonies, where the said Company's Factories and Trade are or shall be, within any the Ports or Places afore limited, shall be immediately and from henceforth, under the Power and Command of the said Governor and Company, their Successors and Assigns; SAVING the Faith and Allegiance due to be performed to Us, Our Heirs and Successors aforesaid; and that the said Governor and Company shall have Liberty, full Power and Authority, to appoint and establish Governors, and all other Officers to govern them, and that the Governor and his Council of the several and respective Places where the said Company shall have Plantations, Forts, Factories, Colonies, or Places of Trade within any the Countries, Lands or Territories hereby granted, may have Power to judge all Persons belonging to the said Governor and Company, or that shall live under them, in all Causes, whether Civil or Criminal, according to the Laws of this Kingdom, and to execute Justice accordingly. And, in Case any Crime or Misdemeanor shall be committed in any of the said Company's Plantations, Forts, Factories, or Places of Trade within the Limits aforesaid, where Judicature cannot be executed for want of a Governor and Council there, then in such Case it shall and may be lawful for the chief Factor of that Place and his Council, to transmit the Party, together with the Offence, to such other Plantation, Factory, or Fort, where there shall be a Governor and Council, where Justice may be executed, or into this Kingdom of England, as shall be thought most convenient, there to receive such Punishment as the Nature of his Offence shall deserve. AND MOREOVER, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, WE DO GIVE and grant unto the said Governor and Company, and their Successors, free Liberty and Licence, in Case they conceive it necessary, to send either Ships of War, Men or Ammunition, unto any their Plantations, Forts, Factories, or Places of Trade aforesaid, for the Security and Defence of the same, and to choose Commanders and Officers over them, and to give them Power and Authority, by Commission under their Common Seal or otherwise, to continue or make Peace or War with any Prince or People whatsoever, that are not Christians, in any Places where the said Company shall have any Plantations, Forts or Factories, or adjacent thereunto, as shall be most for the Advantage and Benefit of the said Governor and Company, and of their Trade; and also to right and recompense themselves upon the Goods, Estates or People of those Parts, by whom the said Governor and Company shall sustain any Injury, Loss, or Damage, or upon any other People whatsoever that shall any Way, contrary to the Intent of these Presents, interrupt, wrong or injure them in their said Trade, within the said Places, Territories, and Limits, granted by this Charter. And that it shall and may be lawful to and for the said Governor and Company, and their Successors, from time to time, and at all Times from henceforth, to erect and build such Castles, Fortifications, Forts, Garrisons, Colonies or Plantations, Towns or Villages, in any Parts or Places within the Limits and Bounds granted before in these Presents, unto the said Governor and Company, as they in their Discretion shall think fit and requisite, and for the Supply of such as shall be needful and convenient, to keep and be in the same, to send out of this Kingdom, to the said Castles, Forts, Fortifications,

Garrisons, Colonies, Plantations, Towns or Villages, all Kinds of Cloathing, Provision of Victuals, Ammunition and Implements, necessary for such Purpose, paying the Duties and Customs for the same, as also to transport and carry over such Number of Men being willing thereunto, or not prohibited, as they shall think fit, and also to govern them in such legal and reasonable Manner as the said Governor and Company shall think best, and to inflict Punishment for Misdemeanors, or impose such Fines upon them for Breach of their Orders, as in these Presents are formerly expressed. AND FURTHER, Our Will and Pleasure is, and by these Presents, for Us, Our Heirs and Successors, WE do grant unto the said Governor and Company, and to their Successors, full Power and lawful Authority to seize upon the Persons of all such English, or any other Our Subjects, which shall sail into Hudson's Bay, or inhabit in any of the Countries, Islands or Territories hereby granted to the said Governor and Company, without their Leave and License in that Behalf first had and obtained, or that shall contemn or disobey their Orders, and send them to England; and that all and every Person or Persons, being Our Subjects, any ways employed by the said Governor and Company, within any the Parts, Places, and Limits aforesaid, shall be liable unto and suffer such Punishment for any Offences by them committed in the Parts aforesaid, as the President and Council for the said Governor and Company there shall think fit, and the Merit of the Offence shall require, as aforesaid; and in case any Person or Persons being convicted and sentenced by the President and Council of the said Governor and Company, in the Countries, Lands, or Limits aforesaid, their Factors or Agents there, for any Offence by them done, shall appeal from the same; that then and in such Case, it shall and may be lawful to and for the said President and Council, Factors, or Agents, to seize upon him or them, and to carry him or them home Prisoners into England, to the said Governor and Company, there to receive such condign Punishment as his Cause shall require, and the Law of this Nation allow of; and for the better Discovery of Abuses and Injuries to be done unto the said Governor and Company, or their Successors, by any Servant by them to be employed in the said Voyages and Plantations, it shall and may be lawful to and for the said Governor and Company, and their respective President, Chief Agent or Governor in the Parts aforesaid, to examine upon Oath all Factors, Masters, Pursers, Supercargoes, Commanders of Castles, Forts, Fortifications, Plantations or Colonies, or other Persons, touching or concerning any Matter or Thing, in which by Law or Usage an Oath may be administered, so as the said Oath, and the Matter therein contained, be not repugnant, but agreeable to the laws of this Realm. AND, WE do hereby streightly charge and command all and singular, our Admirals, Vice-Admirals, Justices, Mayors, Sheriffs, Constables, Bailiffs, and all and singular other our Officers, Ministers, Liege Men and Subjects whatsoever, to be aiding, favouring, helping and assisting to the said Governor and Company, and to their Successors, and to their Deputies, Officers, Factors, Servants, Assigns and Ministers, and every of them, in executing and enjoying the Premises, as well on Land as on Sea, from time to time, when any of you shall thereunto be required; ANY STATUTE, Act, Ordinance, Proviso, Proclamation, or Restraint heretofore had, made, set forth, ordained, or provided, or any other Matter, Cause or Thing whatsoever to the contrary in any wise notwithstanding, IN WITNESS WHEREOF, we have caused these Our Letters to be made Patent; WITNESS OURSELF at Westminster, the Second Day of May, in the Two and Twentieth Year of Our Reign.

By Writ of Privy Seal,

PIGOTT.

APPENDIX B.

Page 7.—GRANT OF THE DISTRICT OF ASSINIBOIA BY THE HUDSON'S BAY COMPANY TO LORD SELKIRK.

This Indenture made the twelfth day of June in the fifty-first year of the Reign of Our Sovereign Lord George the Third, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King Defender of the Faith, and in the year of Our Lord one thousand eight hundred and eleven.

Between the Governor and Company of Adventurers of England trading into Hudson's Bay of the one part and the Right Honorable Thomas Earl of Selkirk of the other part.

Whereas the said Governor and Company are seized to them and their successors in fee simple as absolute Lords and Proprietors of all the Lands and Territories situate upon the Coasts and Confines of the Seas, Streights, Bays, Lakes, Rivers, Creeks and Sounds within the entrance of the Streights commonly called Hudson's Streights in the North West parts of America and which Lands and Territories are reputed as one of the Plantations or Colonies belonging or annexed to the United Kingdom of Great Britain and Ireland and are called Ruperts Land.

And whereas the said Governor and Company have for divers good and valuable causes and considerations them thereunto moving agreed to convey and assure a certain Tract or Parcel of the said Lands and Territories hereinafter described unto and to the use of the said Earl of Selkirk, his heirs and assigns under and subject to certain conditions hereinafter expressed and contained.

Now therefore this Indenture witnesseth that in pursuance of such agreement and in consideration of the sum of ten shillings of lawful money of Great Britain to the said Governor and Company well and truly paid by the said Earl of Selkirk at or before the execution of these presents (the receipt whereof is hereby acknowledged) and for divers good and other valuable causes and considerations them the said Governor and Company have given, granted, aliened, enfeoffed and confirmed and by these presents, do give, grant, alien, enfeoff and confirm unto the said Earl of Selkirk, his heirs and assigns, all that Tract of Land or Territory being within and forming part of the aforesaid Lands and Territories of the said Governor and Company bounded by an imaginary line running as follows (that is to say) beginning on the western shore of Lake Winnipie, otherwise Winnipeg, at a point in fifty-two degrees and thirty minutes north latitude and thence running due west to the Lake Winnepigoos, otherwise called Little Winnipeg, then in a southerly direction through the said Lake so as to strike its western shore in latitude fifty-two degrees, then due west to the place where the parallel of fifty-two degrees north latitude intersects the western

branch of Red River, otherwise called Assiniboine River, then due south from that point of intersection to the Height of Land which separates the waters running into Hudson's Bay from those of the Missouri and Mississippi, then in an easterly direction along the said Height of Land to the source of the River Winnipie or Winnipeg (meaning by such last named River, the Principal Branch of the waters which unite in Lake Saginagas), then along the main stream of the waters and the middle of the several Lakes through which they flow to the mouth of the Winnipie River and thence in a northerly direction through the middle of Lake Winnipie to the place of beginning.

As the said Tract or Parcel of Land hereby granted or intended so to be is more particularly described and distinguished, and the boundary thereof marked out in the map or plan annexed to these presents, in which plan the lands hereby intended to be granted are coloured red.

Together with all mines, minerals and metals and delfs and quarries of stone and lime already discovered or hereafter to be discovered within the limits of the land hereby granted and enfeoffed or otherwise assured or expressed and intended so to be.

And also all and singular, houses, edifices, buildings, forests, woods, springs, woodlands, and underwoods and the ground and soil thereof respectively. Trees, timber and timber like trees, quays, wharfs, landings and landing places, lakes, ponds, rivers, pools, dams and streams of water, fishings and fishing places and rights of fishery, moats, moors, marshes, wastes, waste grounds, commons, common of pasture and common of turbary, furzes, heaths, mounds, hedges, fences, ditches, roads, feus, feu-grounds, ways, paths, passages, easements, waters, water-courses and all and singular other the rights, franchises, liberties, customs, profits, commodities, emoluments, benefits, advantages, members, hereditaments and appurtenances whatsoever to all and singular the said lands and premises hereby granted and enfeoffed or otherwise assured or expressed and intended so to be, or any part or parcel thereof belonging or in anywise appertaining to or with the same held used possessed or enjoyed or accepted, reputed, adjudged, esteemed, deemed, taken or known as part parcel or member thereof, or of any part thereof or as appurtenant thereunto and the reversion and reversions, remainder and remainders yearly and other profits of the said land, hereditaments and premises hereby granted and enfeoffed or otherwise assured or expressed and intended so to be, or any part or parcel thereof and all the estate, right, title, interest, use, trust, inheritance, property, possession, benefit, claim, and demand whatsoever at law and in equity or otherwise howsoever of them the said Governor and Company of in to or out of the land, hereditaments, and premises hereby granted and enfeoffed or otherwise assured or expressed and intended so to be and every part and parcel of the same. Saving and reserving nevertheless to the said Governor and Company and their successors all rights of jurisdiction whatsoever granted to said Company by their Charter.

To have and to hold the land and hereditaments and all and singular other the premises hereby granted and enfeoffed or otherwise assured or expressed and intended so to be, and every part and parcel of the same unto the said Earl of Selkirk, his heirs and assigns for ever.

As to for and concerning such an extent or quantity or such separate extents or quantities of the Tract or Territory of Land hereby granted and enfeoffed shall in the whole amount be equal to one tenth part of the said Tract or Territory and which one tenth shall be set out by the said Earl of Selkirk, his heirs or assigns before or within the space of three years after the said Governor and

Company or their successors shall by some writing under the hand of the Governor of the said Company for the time being require the said Earl of Selkirk, his heirs or assigns to make such division or setting out to the use of such person or persons being or having been in the service or employ of the said Governor and Company for a term not less than three years immediately preceding the date and execution of any direction or appointment to be made by the said Governor and Company and their successors under this present power, in such parts, shares, and portions and for such estates and interests as the said Governor and Company and their successors shall from time to time by any writing to be sealed with the common seal of the said Company direct or appoint.

Nevertheless, so that no person taking under any such direction or appointment and being under the Rank or Degree of Master of a Trading Post, shall be or become entitled to any greater part share or proportion than two hundred acres, nor any person of the Rank or Degree of Master of a Trading Post any greater part share or proportion than one thousand acres.

And also, so that every use estate or interest which shall be created under or by virtue of any direction or appointment to be made by the said Governor and Company and their successors in pursuance of the aforesaid power be made and rendered subject to a condition to be void if the person or persons or his, her or their assigns shall not be or become a settler or settlers upon the land hereby directed or appointed or if he, she or they or his, her or their assigns shall neglect or fail to cultivate and continue the cultivation of the same land and in the mean time and until such direction or appointment shall be made and so far as any such direction or appointment shall not extend.

To the use of the said Earl of Selkirk, his heirs and assigns for ever and to and for no other use, intent or purpose whatsoever.

And as to all the remaining part or parts, portion or portions of the said Tract or Territory. To the use of the said Earl of Selkirk, his heirs and assigns for ever.

Nevertheless, upon under and subject to the conditions hereinafter mentioned expressed and declared of and concerning the same.

And to the intent that these presents may be rendered a complete and effectual assurance. The said Governor and Company have made, ordained, constituted and appointed and by this present Deed or Instrument under their common seal—Do make, ordain, constitute and appoint William Auld, Thomas Thomas, William Sinclair, William Hillier, James Swain, Donald Sutherland, Hugh Heney, John Stitt, John McKay, and Archibald Mason, all servants of the said Governor and Company jointly and each and every of them separately their true and lawful attorneys and attorney, for them the said Governor and Company and in their name, place and stead to enter into and upon the land, hereditaments and premises hereby granted and enfeoffed or otherwise assured or expressed and intended so to be, or into or upon any part or parcel of the same in the name of the whole, wholly, and quiet and peaceable possession and seizin of the said land, hereditaments and premises and of every or any part thereof, in the name of the whole, for and in the name of the said Governor and Company, to have and take and after such entry made and possession and seizin so had and taken as aforesaid to deliver quiet and peaceable possession and seizin thereof and of every part thereof unto Miles McDonnell, Esquire, Kelly Clerk, Abel Edwards, Surgeon, Kenneth MacRae and William Tomison, Gentlemen, whom the said Earl of Selkirk hath made, ordained, constituted and appointed, and by these

presents doth make, ordain, constitute and appoint jointly and separately his true and lawful attorneys and attorney for and in his name place and stead to take and receive the same, to be had and held according to the tenor form and effect of these presents.

And the said Governor and Company, and the said Earl of Selkirk do hereby respectively ratify, confirm and allow to be sufficiently available all and whatsoever their said attorneys respectively shall lawfully do in the premises by virtue of these presents. Provided always, and it is hereby agreed and declared between and by the parties hereto, and the presents are upon this express condition. That if the said Thomas Earl of Selkirk, his heirs or assigns shall not within the space of ten years to be computed from the date of these presents settle or establish upon the tract of ground hereby expressed to be granted—One thousand families, each of them consisting of one married couple at the least, according to the true intent and meaning of these presents.

And if the said Governor and Company shall by notice in writing to be given to the said Thomas Earl of Selkirk, his heirs or assigns or left at his or their dwelling or usual place of abode require him or them to establish and settle such a number of families on the premises as will make up one thousand families on the same.

And the said Thomas Earl of Selkirk, his heirs or assigns shall during the space of three years next after such notice shall be given or left as aforesaid neglect to settle or make up the said number of families—then and in that case it shall be lawful for the said Governor and Company by Deed under their common seal to revoke the grant hereinbefore expressed and contained, and to enter upon the premises hereby granted of his or their former estate—but subject and without prejudice to such grant as shall have been previously made by the said Earl, his heirs or assigns to or in favour of any person or persons, so as upon the land comprized in any such grant there be actual settlers to the amount of one family for every five thousand acres.

And also upon this further express condition that the said Earl of Selkirk, his heirs or assigns or any other person or persons deriving title by from through or under him, them or any of them shall not nor will at any time or times hereafter, in or by any direct or indirect mediate or immediate manner, ways or means, infringe or violate, or set about or attempt to infringe, or violate, or aid, assist or abet, or set about, or attempt to aid, assist or abet or supply with spirituous liquors—trading goods—provisions or other necessaries any person or persons whomsoever corporate or incorporate, or any Prince, Power, Potentate, or State whatsoever, who shall infringe or violate, or who shall set about, or attempt to infringe or violate the exclusive rights, power, privileges, and immunities of commerce, trade and traffick, or all or any other of the exclusive rights, powers, privileges and immunities of or belonging or in any wise appertaining to or held, used or enjoyed by the said Governor and Company and their successors and particularly such rights, powers, privileges and immunities as they are entitled to under or by virtue of or which were given and granted or intended to be given and granted to them and their successors by the Charter of His late Majesty King Charles the Second, bearing date on or about the second day of May, in the year one thousand six hundred and sixty-nine—save and except such rights, powers, privileges, immunities and franchises as are incident to the land hereditaments and premises hereby granted and enfeoffed or otherwise assured or expressed and intended so to be, or any part or parcel of the same and which are hereby intended to pass by and with the same without the license

or consent in writing of the Governor of the said Company and their successors for the time being for that purpose first had and obtained.

And also, that he, the said Earl of Selkirk, his heirs or assigns or any person deriving title by, from, through, or under him, them, or any of them—shall not in any manner without such license or consent as aforesaid carry on or establish or attempt to carry on or establish in any posts of North America, any trade or traffick, in or relating to any kind of furs or peltry or in any manner directly or indirectly aid or abet any person or persons in carrying on such trade or traffic or in any manner otherwise than as hereinafter mentioned, navigate or traffic or assist in navigating or trafficking upon or within any of the seas or waters within Hudson's Straights aforesaid, or unlawfully enter into or trespass upon any part of the land or territories belonging to the said Governor and Company and their successors in or at Ruperts Land aforesaid, not hereby granted and enfeoffed or otherwise assured or expressed and intended so to be.

Nevertheless it is agreed that no act of entry shall be deemed construed or taken to be an act of trespass within the meaning of this condition unless committed after some special notice or prohibition in writing, shall be or have been given by the said Governor and Company or their successors or some person or persons duly authorized by them unto the person or persons who from time to time shall be, or be alleged to be guilty of such trespass.

Provided also, and it is hereby further declared and agreed by and between the parties hereto, and the presents are upon this further condition that it shall and may be lawful to and for the said Governor and Company and their successors at any time or times except in respect to such of the land hereby granted and enfeoffed or otherwise assured or expressed and intended to be, as shall have been put by the said Earl, his heirs or assigns into a state of actual cultivation or settlement to form or make within the said tract of land hereby granted any post or place, posts or places of establishment or communication for traffick, trade or commerce with the native Indians and for such purpose to and for the said Governor and Company and their successors to use, occupy and enjoy such post or place, posts or places, and in like manner to use, occupy and enjoy all and every post and place or posts and places already formed or made with free liberty of ingress, egress and regress to and for the said Governor and Company and their successors and their servants or agents with or without horses, carts, carriages, boats, vessels and other usual or customary vehicles of conveyance to go to and from the said posts and places in over or upon all and every or any of the roads, ways, rivers and canals which now do or which shall or may from time to time lead to or from the said posts or places doing as little damage as may be to the other part of the land hereby granted and enfeoffed and allowing reasonable compensation for the damage which shall be so done.

Provided also, and it is hereby further declared and agreed between and by the parties to these presents that the several conditions herein before contained shall not be construed and taken to be entire conditions, so that a dispensation or waiver of any part branch or member either pro-tempore or otherwise shall operate as a waiver or dispensation of every part of such condition, it being the true intent and meaning of the said parties to these presents that the same conditions may be dispensed with, in part either pro-tempore or otherwise and yet continue in force and being as to every other part branch or member thereof, not within the express letter of such dispensation any rule of law to the contrary in any wise notwithstanding.

And it is also declared and agreed between and by the parties to these

presents, and the said Governor and Company for themselves and their successors hereby grant, that in case the said Earl of Selkirk, his heirs or assigns shall alien or otherwise dispose of the land, hereditaments and premises hereby granted and enfeoffed, or otherwise assured or expressed and intended so to be, in separate parcels or divisions, such division or parcel shall so far as concerns any condition herein contained, be and shall be deemed, construed and taken to be held distinct, separate and apart from the other or others of the said divisions or parcels, and the estate and interest of the owner and proprietor, owners and proprietors of any one or more division or parcel, divisions or parcels shall not be or be liable to be defeated or destroyed by any act of forfeiture or breach of condition which shall be made, done or committed by the owner or proprietor, owners or proprietors of any other division or parcel, divisions or parcels, but shall and may notwithstanding such act of forfeiture or breach of condition continue and be in full force and effect, in like manner, as though the several conditions herein contained had been annexed to the estate and interest of such last mentioned owner, proprietor or proprietors only and not to the estate or interest of any other owner or proprietor, owners or proprietors.

Provided also, and it is hereby further declared and agreed between and by the parties to these presents that in all and every or any case of forfeiture or breach of the conditions herein contained the said Governor and Company and their successors shall take advantage and avail themselves of the same by entry, within five years from the day or time on or upon which any act of forfeiture or breach of condition shall be or have been made, done or committed or be for ever barred and foreclosed from taking advantage of the same, it being intended and hereby agreed that such omission on the part of the said Governor and Company and their successors, whether arising from want of knowledge or from any other cause, shall be construed to be and shall operate as a dispensation or waiver of such forfeiture.

Provided also, and it is hereby further agreed and declared between and by the parties to these presents and the said Governor and Company do hereby for themselves and their successors, give and grant unto the said Earl of Selkirk, his heirs and assigns and all and every the person and persons whomsoever claiming or deriving title by, from, through, or under him, them or any of them, as lessee or leasees, or otherwise, free liberty and license to convey any produce of Rupert's Land aforesaid, save and except the furs, skins of beavers and other animals of a wild and untamed nature, to Port Nelson, in Hudson's Bay, and to commit, send and consign the same to the Port of London, to be there deposited and lodged in the warehouses belonging to or to be from time to time appointed by the said Governor and Company and their successors.

And in like manner to import, bring and convey into the said land and territories called Rupert's Land any goods, wares, merchandizes or commodities of any kind, nature or description whatsoever as well, manufactured for the use, convenience and consumption of the persons being or residing within the limits of the land hereby granted and enfeoffed, or otherwise assured or expressed and intended so to be, and to sell, barter and exchange, or otherwise dispose of the same at his and their will and pleasure.

Nevertheless, it is further agreed that the said produce, goods, wares, merchandizes and commodities shall be conveyed to and from Port Nelson in ships or vessels, to be from time to time provided by the said Governor and Company and their successors, in pursuance of the covenant or agreement in that behalf hereinafter contained.

And also that the said Governor and Company and their successors shall and may claim and shall be paid and allowed by the owner or proprietor, owners or proprietors of the said produce, goods, wares, merchandizes and commodities, all charges as and for and in the nature of quayage, wharfage, warehouse room and commission for sale which shall be or constitute the average or ordinary price or prices in similar cases.

Together with such charge for freightage as shall at the time or respective times be paid or payable for vessels navigating between the Ports of London and Quebec, or at or for such rates of freight as vessels can or may be chartered between London and Hudson's Bay.

And the said Governor and Company shall and may also charge and shall be paid and allowed for the license hereby given and granted to and for the purposes hereinafter mentioned, as and in the nature of a custom or duty any sum not exceeding five pounds, for and upon every one hundred pounds in value, or amount of the produce, goods, wares, merchandizes and commodities, which shall or may be conveyed to or from Port Nelson aforesaid, and so in proportion for a less quantity in value or amount than one hundred pounds unless the same kind of produce, goods, wares, merchandizes and commodities shall be subject to a higher rate of duty or importation at Quebec, and then in cases of importation the said Governor and Company and their successors shall and may charge, and shall be paid and allowed at and after the same rate as shall be paid or payable at Quebec, such value or amount to be from time to time fixed and ascertained in all cases of imports by and upon the actual and bona fide invoice prices, and in all cases of exports by the net proceeds of sales at London.

And the said Governor and Company do hereby for themselves in their corporate, and not individual capacity and for their successors, covenant promise and agree to and with the said Earl of Selkirk, his heirs and assigns in manner following, that is to say;

That notwithstanding any act, deed, matter or thing whatsoever made, done, committed, permitted or suffered to the contrary by them the said Governor and Company, or by any person or persons claiming or to claim by, from, through, under or in trust for them, they, the said Governor and Company now have in themselves, good right, full power and lawful and absolute authority by these presents to convey and assure the land, hereditaments and premises hereby granted and enfeoffed, or otherwise assured or expressed and intended so to be, and every part and parcel of the same unto and to the use of the said Earl of Selkirk, his heirs and assigns, according to the true interest and meaning of these presents, and also that notwithstanding any such act, deed, matter or thing as aforesaid, it shall and may be lawful to and for the said Earl of Selkirk, his heirs and assigns, immediately after livery of seizin made and executed in pursuance of these presents, and from time to time and at all times thereafter peaceably and quietly to have hold, use, occupy, possess and enjoy the land, hereditaments and premises hereby granted and enfeoffed, or otherwise assured or expressed and intended so to be, and every part and parcel of the same and the rents, issues and profits thereof to have, receive and take for his and their own use and benefit without any let, suit, trouble, eviction, molestation, ejection, expulsion, interruption, hindrance or denial of from or by the said Governor and Company or their successors or any other person or persons lawfully or equitably claiming or to claim any estate, right, title, trust or interest at law or in equity of, in, to, out of or upon the said land, hereditaments and premises or any part or parts of the same by, from, through, under, or in trust

for them, and that free and clear, and freely and clearly and absolutely, acquitted, exonerated, released and discharged or otherwise by the said Governor and Company and their successors at their own costs and charges, well and sufficiently protected, defended, saved harmless and kept indemnified of, from and against all former and other gifts, grants, bargains, sales, leases, mortgages, jointures, uses, trusts, wills, intails, annuities, legacies, rent charge, rent seek, rent service, and all arrears of rent, and also of from and against all and all manner of fines, issues, seizures, amerciements, statutes, recognizances, judgments, executions, extents, suits, decrees, debts of record, debts to the King's Majesty, or any one of his predecessors, sequestrations, debts, titles, troubles, liens, charges, and incumbrances, at any time or times heretofore, and to be at any time or times and from time to time hereafter made, done or committed, occasioned, permitted or suffered by the said Governor and Company or their successors or any other person or persons rightfully claiming or to claim by, from, through, under, or in trust for them, or by their acts, means, default, consent, privity or procurements.

And moreover, that they the said Governor and Company and their successors, and all persons whomsoever lawfully or equitably claiming or to claim by, from, through, under, or in trust for them any estate, right, title, trust, charge or interest of, in, to, or out of the land, hereditaments and premises hereby enfeoffed or otherwise assured or expressed and intended so to be, or any part or parcel of the same shall and will from time to time and at all times hereafter upon every reasonable request, and at the costs and charges in all things of the said Earl of Selkirk, his heirs and assigns make, do, acknowledge, suffer, execute, and perfect, or cause, or procure to be made, done, acknowledge, suffered, executed or perfected all such further and other lawful and reasonable acts, deeds, devices, conveyances, and assurances in the law whatsoever, either by common recovery or recoveries, deed or deeds enrolled or not enrolled, release confirmation or assurance whatsoever for the further, better, more perfectly and absolutely and satisfactorily conveying or assuring the said land, hereditaments and premises and every part and parcel thereof, unto and to the use of the said Earl of Selkirk, his heirs and assigns, subject to the power of appointment on the part of the said Company, and to the conditions and provisos hereinbefore contained, according to the true intent and meaning of these presents, as by the said Earl of Selkirk, his heirs or assigns, or his or their counsel in the law shall be reasonably devised or advised and required, so as further assurances or any of them shall not contain or imply any other or more general covenants or warranty on the part of the said Governor and Company than as for or against them and their successors in their corporate and not individual capacity, and on the part of any other person or persons who shall be required to make and execute the same than for the acts, deeds, and defaults of himself or themselves respectively and his, her and their executors and administrators, and so as the person or persons who shall be required to make or execute such further assurances be not compelled or compellable for the making or doing thereof to go or travel above ten miles from his, her or their dwellings or places of abode.

And further that the said Governor and Company and their successors shall and will from time to time and at all times hereafter find and provide the said Earl of Selkirk, his heirs and assigns and all and every other person or persons whomsoever deriving title, by, from, through, or under him, them, or any of them, either as lessee or lessees or otherwise, and who shall be or become a settler or settlers upon or at Rupert's Land aforesaid, with good suitable and

convenient ships or vessels, in order and to the intent that he, she or they, may in pursuance and under or by virtue of the licence hereinbefore given and granted, convey such produce, goods, wares, merchandizes and commodities as aforesaid to and from Port Nelson aforesaid, and also, shall and will find and provide proper and suitable warehouses, wharfs, quays, and other places for housing and landing the same before lading or after unlading thereof on being paid and allowed such price or rate of freightage and duty and such quayage, wharfage, and warehouseroom as aforesaid.

And in case the said Governor and Company and their successors shall neglect or fail to provide such ships or vessels, warehouses, wharfs, quays, and other places as aforesaid contrary to the true intent spirit and meaning of the covenant or agreement last aforesaid,—then, and in such case it shall and may be lawful to and for such settler or settlers to convey such produce, goods, wares, merchandizes and commodities to and from Port Nelson aforesaid in ships or vessels belonging to them the said settler or settlers or any person or persons whomsoever (subject nevertheless to the payment of such customs or duties as aforesaid), and after and not before such settler or settlers shall have bound himself, herself or themselves, and his, her, and their Heirs, executors and administrators in a sufficient penalty, not to break bulk between the port of lading and the port of discharge, and he, she, or they shall not hereby be, or be deemed or taken to have infringed or violated any right, power, privilege, immunity, or franchise whatsoever belonging or appertaining to the said Governor and Company or their successors within the intent and meaning of any condition herein contained.

And also that the said Governor and Company and their successors shall and will stand possessed of and interested in all and singular the monies to be collected and raised for or in the nature of customs or duties under or by virtue of these presents, upon the trusts and to and for the intents and purposes hereinafter mentioned, that is to say;

In trust, that they the said Governor and Company and their successors do and shall from time to time and at all times hereafter pay and apply the same for and towards improving the communication by land or water from Port Nelson to Lake Winnipeg, regulating and sustaining the police and civil government of the settlements or plantations within their own territories, making and erecting public courts, offices, places and buildings, and for and towards all or any such other purposes as they the said Governor and Company and their successors shall or may think meet and proper and conducive to the well-being of their said settlements and establishments in or at Rupert's Land aforesaid, or of the persons being settling and residing in or within the same.

And they the said Governor and Company and their successors shall and will from time to time account for such monies accordingly, it being the true intent and meaning of the said parties hereto that the said Company shall have the absolute control and expenditure of all and singular the monies arising as aforesaid, but that the same shall be considered as a fund to be employed for purposes of general benefit and improvement to their establishments and possessions in America, and not to be divided as an account of profit to the general proprietors of their stock.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

(Signed) SELKIRK, [L.S.]

ALEXANDER LEAN, [L.S.]

Secretary of the Hudson's Bay Company.

Indorsed.—Sealed under the common seal of the within-mentioned Governor and Company, and signed and delivered by Alexander Lean, their Secretary, pursuant to their order and appointment, and signed, sealed, and delivered by the within-mentioned Thomas, Earl of Selkirk (being first duly stamped), in the presence of

ALEXANDER MUNDELL,
Parliament Street,
Westminster.

EDWARD ROBERTS,
Hudson's Bay House.

Suit l'attestation écrite et assermentie du premier de ces deux témoins, Alex. Mundell, en présence du Maire de Londres.

Sworn at the Mansion House, London, this twenty-third day of April, 1819, before me,	(Signed)	ALEXANDER MUNDELL.
		JOHN AIKINS [L.S.], Mayor.

Puis, attestation notariée, in testimonium veritatis.

(Signed) WILLIAM DUFF,
Notary Public.

Be it remembered that on the fourth day of September, in the year 1812, at the Forks of Red River, peaceable possession of the land and hereditaments by the within-written indenture, granted and enfeoffed, or otherwise assured or expressed, and intended so to be, was taken, had, and delivered, by the within-named William Hillier, one of the attorneys for that purpose appointed, unto the within-named Miles MacDonnell, Esquire, who was duly authorized to receive the same, to and for the use of the within-named Earl of Selkirk, his heirs and assigns, according to the form and effect of the within-written indenture, in the presence of

(Signed) JOHN McLEOD,
RODERICK McKENZIE.

NOTE.—This deed is extracted from Register Book "A" of the District of Assiniboia, in which it occupies pp. 1-9. It is accompanied by *inter alia*, a certificate of J. McLeod and R. McKay as to peaceable and quiet possession having been delivered to Miles Macdonell, Esq., agent for Lord Selkirk, on Sept. 4, 1812, by an affidavit of execution by Alex. Mundell, sworn at the Mansion House, on April, 23, 1819, by a certificate of the Lord Mayor of the same day as to that oath, by a notary's certificate as to the deed and map being faithful copies, and by a certificate of the United States Consul as to John Atkins being truly Lord Mayor and William Duff a notary.

APPENDIX C.

Page 2.—JUDICIAL FINDINGS ON THE HUDSON'S BAY COMPANY'S CHARTER.

In *Calder's Case*, tried before the Court of Governor and Council of Assiniboia at Fort Garry, on August 17, 1848, the Recorder of Rupert's Land, in an exhaustive judgment, (a) expressly found in favour of the proprietary rights of the Company. So did also the late Chief Justice of Manitoba (Wood) on June 10, 1874, in a most learned judgment in the celebrated case of *Regina v. Lepine*; the present Chief Justice of Manitoba in the case of *Kealing v. Moises*, 2 Man. Rep. 47; and particularly Mr. Justice Killam, on August 28, 1888, in the case of *Sinclair v. Mulligan*, 3 Man. Rep. 481, in the course of a very able judgment, which was affirmed on appeal. In the course of this decision the learned judge remarked:

"Although this particular portion (Manitoba) of the North-west was not in possession of the Hudson's Bay Company, or of British subjects, until long after that date (1670), and although, in reality, the authority of England over it was only established by the treaties of Utrecht and Paris in 1713 and 1763, yet the country around Hudson's Bay was taken possession of by British subjects before 1670, and by the Hudson's Bay Company immediately after its charter was granted, and it would be impossible to pause at every fort or post established by the Company, and say that upon its establishment the laws of England of that date were there introduced. The Red River settlement was established by the authority of the Hudson's Bay Company. The Council of Assiniboia was the creature of that Company; from the Company it derived all its authority, legislative or judicial."

(a) Reported at length in 2 Western Law Times Reports, 1.

See also the case of *Connolly v. Woodrich* (1867) 11 Can. Jur. 197, for Judgment of the Superior Court at (Montreal) on question of marriages in the Territory - Nebraska - outside of H.B. Co's limits: contains some fascinating evidence in habits of Sir Geo. Simpson

APPENDIX D.

Page 24.—LIST OF RED RIVER SETTLERS OF 1812-1814.

(Taken from Transaction No. 33 of the Historical and Scientific Society of Manitoba.)

List of men belonging to the Red River Settlement, arriving in Hudson Bay in 1811, and brought from York Factory, July, 1812—

Colin Campbell, aged 21, from Argyle, labourer.
 John McKay, aged 22, from Ross-shire, boatbuilder.
 John McLennan, aged 23, from Ross-shire, labourer.
 Beth Bethune, aged 19, from Ross-shire, labourer.
 Donald McKay, aged 17, from Ross-shire, labourer.
 William Wallace, aged 21, from Ayr, labourer.
 John Cooper, aged 26, from Orkney, labourer.
 Nich'l Harper, aged 34, from Orkney, labourer.
 Magnus Isbister, aged 21, from Orkney, labourer.
 Geo. Gibbon, aged 50, from Orkney, labourer.
 Thos. McKim, aged 33, from Sligo, overseer.
 Pat. Corcoran, aged 24, from Crosmalina, carpenter.
 John Green, aged 21, from Sligo, labourer.
 Pat. Quinn, aged 21, from Killalla, labourer.
 Martin Jordan, aged 16, from Killalla, labourer.
 John O'Rourke, aged 20, from Killalla, labourer.
 Anthony McDonnell, aged 23, from Killalla, labourer.
 James Toomey, aged 20, from Sligo, labourer.

18 in all.

LIST OF SETTLERS WHO LANDED AT CHURCHILL IN AUGUST, 1813, AND PROCEEDING OVERLAND TO YORK FACTORY, ARRIVED IN THE SPRING OF 1814 AT RED RIVER.

Passengers on board the *Prince of Wales* for Red River Settlement—

1. Geo. Campbell, aged 25, from Archwile Parish, Creech, Sutherland.
2. Helen, his wife, aged 20.
3. Bell, his daughter, aged 1.
4. John Sutherland, aged 50, from Kildonan. Died 2nd September at C. F., a very respectable man.
5. Catherine, his wife, aged 46.
6. George, his son, aged 18.
7. Donald, his son, aged 16.

8. Alexander, his son, aged 9.
9. Jannet, his daughter, aged 14.
10. Angus McKay, aged 24, from Kildonan.
11. Jean, his wife.
12. Alex. Gunn, aged 50, from Kildonan.
13. Christine, his wife, aged 50. Died 20th September, C. F.
14. William, his son, aged 18.
15. Donald Bannerman, aged 50. Died 24th September at C. F.
16. Christina, his wife, aged 44.
17. William, his son, aged 18.
18. Donald, his son, aged 8.
19. Christina, his daughter, aged 16.
20. Geo. McDonald, aged 48. Died 1st September, 1813, C. F.
21. Jannet, his wife, aged 50.
22. Betty Grey, aged 17.
23. Catherine Grey, aged 23.
24. Barbara McBeath, widow, aged 45, Borobal.
25. Charles, her son, aged 16.
26. Jenny (her daughter), aged 23.
27. Andrew McBeath, aged 19.
28. Jannet, his wife.
29. William Sutherland, aged 22, from Borobal.
30. Margaret, his wife, aged 15.
31. Christina, his sister, aged 24.
32. Donald Gunn, aged 65, from Borobal.
33. Jannet, his wife, aged 50.
34. (Transferred to the *Eddystone*, for H. B. Co. service.)
35. Geo. Gunn, son to Donald, aged 16, from Borobal, Parish Kildonan.
36. Esther, his daughter, aged 24.
37. Catherine, his daughter, aged 20. Died 29th August, 1813, C. F.
38. Christian, his daughter, aged 10.
39. Angus Gunn, aged 21.
40. Jannet, his wife.
41. Robert Sutherland, brother to William, No. 29, aged 17, from Borobal.
42. Elizabeth Fraser, aunt to No. 30, aged 30.
43. Angus Sutherland, aged 20, from Auchraich.
44. Elizabeth, his mother, aged 60.
45. Betsy, his sister, aged 18. Died of consumption.
46. Donald Stewart, from Parish of Appin. Died 20th August, 1813, at C. F.
47. Catherine, his wife, aged 30.
48. Margaret, his daughter, aged 8.
49. Mary, his daughter, aged 5.
50. Ann, his daughter, aged 2.
51. John Smith, from Parish Kildonan.
52. Mary, his wife.
53. John, his son.
54. Jean, his daughter.
55. Mary, his daughter.
56. Alex. Gunn, aged 58, from Parish of Kildonan, Sutherland.
57. Elizabeth McKay, his niece.
58. Betsy McKay, his niece.

59. Geo. Bannerman, aged 22, from Kildonan.
 60. John Bruce, aged 60, from Parish of Clyne.
 61. Alex. Sutherland, aged 24, from Parish of Kildonan.
 62. Wm. Sutherland, his brother, aged 19. Died.
 63. Kate Sutherland, his sister, aged 20.
 64. Haman Sutherland, aged 18, from Kenacoil.
 65. Barbara, his sister, aged 20.
 66. James McKay, aged 19, from Cain.
 67. Ann, his sister, aged 21.
 68. John Matheson, aged 22, from Authbreakachy.
 69. Robt. Gunn (Piper), from Kildonan.
 70. Mary, his sister.
 71. Hugh Bannerman, aged 18, from Dackalury, Kildonan.
 72. Elizabeth, his sister, aged 20.
 73. Mary Bannerman.
 74. Alexander Bannerman, aged 19, from Dackalury, Kildonan.
 75. Christian, his sister. Died January, 1814, of consumption.
 76. John Bannerman, aged 19.
 77. Isabella, his sister, aged 16.
 78. John McPherson, aged 18, from Gailable.
 79. Catherine, his sister, aged 26.
 80. Hector McLeod, aged 19.
 81. George Sutherland, aged 18, from Borobal.
 82. Adam, his brother, aged 16.
 83. John Murray, aged 21, from Sirsgill.
 84. Alexander, his brother, aged 19.
 85. Helen Kennedy, from Sligo, Ireland.
 86. Malcolm McEachren, from Skibbo, Isla. [Deserted.]
 87. Mary, his wife. [Deserted.]
 88. James McDonald, blacksmith, from Inverness. (To Fort Augustus.)
 89. Hugh McDonald, carpenter. (To Fort William.) Died 3rd August.
 90. Samuel Lamont, millwright, from Bowmore, Isla.
 91. Alex. Matheson, from Kildonan.
 92. John Matheson.
 93. John McIntyre. (To Fort William.)
 94. Neil Smith, son of No. 31, from Isla.
 95. Edward Sheil, from Balyshannon.
 96. Joseph Kerrigan, from Balyshannon.
- 93 and 94 enter the service of the H. B. C. July, 1814.
- No. 89, Hugh McDonald, died 3rd August at sea.
- Mr. P. La Serre, surgeon, died 16th August.
- No. 46, Donald Stewart, died 20th August.
- No. 37, Catherine Gunn, died 29th August.
- No. 20, George McDonald, died 1st September.
- No. 4, John Sutherland, died 2nd September.
- No. 13, Christian Gunn, died 20th September.
- No. 15, Donald Bannerman, died 24th September.
- No. 45, Betsy Sutherland, died 26th October, of consumption.
- No. 76, John Bannerman, died January, of consumption.
- Christian Sutherland.
- Wm. Sutherland, jun.

APPENDIX E.

Page 24.—LIST OF SETTLERS WHO DESERTED RED RIVER, AND WENT TO CANADA, IN 1815.

The following list appears on p. 25 of the "Papers relating to the Red River Settlement, 1815-1819." It is contained in a "Statement" of Mr. William McGillivray (senior partner of the North-West Company), dated at Kingston, August 15, 1815. He states that the total number amounted to "about one hundred and forty souls, probably forty or fifty families (heads of families), and some single men."

York, September 22, 1815.

A list of settlers from Red River, arrived at Holland River September 6, 1815.

OLD MEN.

Donald Gunn, wife and daughter.
Alexander Gunn and wife.
Angus McDonell, wife and two children.
Neil McKinnon, wife and two boys.

Miles Livingston, wife and two children.
Angus McKay, wife and one child.
John Matheison, wife and one child.
John Matheison, jun., and wife.
George Bannerman and wife.
Andrew McBeath, wife and one child.
William Sutherland, wife and one child.
Angus Gunn, wife and one child.
Alexander Bannerman and wife.
Robert Sutherland and wife.
William Bannerman and wife.
James McKay and wife.

WIDOWS.

Mrs. Barbara McBeath.
Mrs. Jeannet Sutherland and two boys.
Mrs. Elizabeth Sutherland.
Mrs. Christy Bannerman.
Mrs. Jeannet McDonell.

YOUNG WOMEN UNMARRIED.

Jane Gray.
 Elizabeth Gray.
 E. Bannerman.
 E. Gunn.
 Jannet Sutherland

Isabella McKinnon.
 ——— McKinnon.
 Catti. McDonell.
 Elizth. McKay.

YOUNG MEN NOT MARRIED.

John Murray.
 Alex. Murray.
 William Gunn.
 Hugh Bannerman.
 Hector McLeod.
 George Gunn.
 Charles McBeath.

Angus Sutherland.
 Thomas Sutherland.
 Alex. Matheison.
 John McPherson.
 Robert Gunn.
 George Sutherland.

N.B.—The young people capable of labour are generally employed between York and Newmarket. The old people are stationed at Newmarket for the present. Some of the settlers, having gone to Montreal, are not included in this list.

(Sd.) D. McLEAN,
 Agent for the N.-W. Co.

APPENDIX F.

PETITION OF RED RIVER SETTLERS TO THE PRINCE REGENT.

(*Extracted from the Colonial Office Records, Ottawa, liber 150, part 2*).

Hudson's Bay House,
London, March 25, 1818.

My Lord,

The enclosed petition addressed to His Royal Highness the Prince Regent by the inhabitants of the settlement formed on the Red River in the territories of the Hudson's Bay Company has been recently received by the Governor and Committee, and I have now the honour to transmit the same to your Lordships for the purpose of being laid before His Royal Highness.

I also take this opportunity of enclosing the copy of a letter which was sent to the Governor and Committee by Mr. Bird, who took charge of the Company's affairs in Hudson's Bay after the death of Mr. Semple. We understand the original had been addressed to your Lordships, and sent by the Company's ship, *Prince of Wales*, which was detained by ice during the winter 1816-1817; but as it is possible that it may not have reached your Lordships, I am induced to transmit a copy of the duplicate as sent to us by Mr. Bird.

I have the honour to be,
With the greatest respect,
My Lord,

To the Right Honourable
Earl Bathurst, &c., &c., &c.

Your Lordship's most humble servant,
(Sd.) J. P. PELLY,
D.-Gr.

To His Royal Highness

George Prince of Wales, Regent of the

United Kingdom of Great Britain and Ireland, &c., &c.

We, His Majesty's most loyal and dutiful subjects, natives of Scotland, now settlers at Red River, in the territories of Hudson's Bay Company, beg leave humbly to approach the Throne to lay at the feet of your Royal Highness a brief account of the wrongs we have sustained, and to beseech a share of your paternal protection.

Being obliged to leave the lands of our fathers in Scotland, we embraced the proposal of settling under the patronage of the Earl of Selkirk and the Hudson's Bay Company in a British Territory, rather than follow the steps of a number of our countrymen who were emigrating to the United States.

On our arrival here we received allotments of lands, and soon found that in point of beauty, fertility of soil, salubrity of climate, and facility of cultivation,

the country far exceeded any description we had ever heard of it. We met friendly and hospitable reception from the native Indians.

We cultivated some ground, which yielded returns abundant beyond all we had ever known; and we began to cherish the hope that we had found in His Majesty's Dominions a happy asylum for ourselves and our children after us, but to our misfortune, a few individuals, who engross to the Fur Trade of Canada, under the appellation of the North-West Company, considered our innocent prospects of happiness as incompliable with their views of interest, and determined to effect the ruin of this Colony while in its infancy.

For this purpose they endeavoured to incite the Indians to attack us; but in this they did not succeed, the natives having sagacity enough to perceive that our prosperity would be of permanent advantage to themselves. Not being able to accomplish their object this way, the North-West Company next attempted to deprive us of the means of subsistence. While our crops were yet scanty, our subsistence chiefly depended on the herds of buffaloes, with which the neighbouring plains abound. To deprive us of this supply, horsemen were employed to chase away the animals from our hunters. By this device they distressed our families considerably; but as they did not succeed in driving us away, they had recourse to more decisive measures for destroying our establishment.

In the spring of the year 1815 they collected a number of persons, mostly natives of the country, the sons of Canadians by Indian women, many of whom had previously been our friends, but who were unable to resist the threats, as well as allurements, which were held out to induce them to become the instruments of crime. These ignorant men had been accustomed to believe that the commands of their masters would at least screen them from punishment, or, rather, would entirely absolve them from guilt. But the more effectually to secure their obedience, the North-West Company, by a train of deception, led their servants to believe that in all their measures against the Colony, they were acting under the immediate authority of His Majesty's Government.

Their first object was to get possession of the arms and artillery which had been provided for our defence, of which, by a combination of fraud and violence, they found an opportunity of robbing us. After this, they made repeated attacks upon the house of our Governor, in the course of which four persons were severely wounded, and one of them mortally. The ostensible purpose of these attacks was to arrest the Governor, upon a warrant issued against him by a partner of the North-West Company; and we were assured that on his surrender all hostilities would cease. Unable to repel the superior force of our assailants, the Governor at length gave himself up, in hopes that by this sacrifice our peace might be secured. But when the North-West Company had thus deprived us of our chief magistrate, as well as of all means of self-defence, they renewed their attacks upon our place of refuge, threatening us with a general massacre if we did not immediately quit the country. Compelled to abandon the farms we had cultivated, we were indebted for the preservation of our lives to the unsolicited interposition of the Indians. A band of the *Saulteaux* nation, under their chief *Requis*, assisted and escorted us till we were out of danger, while our fellow-subjects trod our crops underfoot, and reduced our cottages to ashes, as well as other buildings which had been erected for the accommodation of the settlement.

We then retired to the northern extremity of Lake *Winnipeg*, a distance of three hundred miles, where we received information that our enemies had dispersed; and being joined by some additional settlers, we returned, and after

a few months' absence reoccupied our farms. Our perseverance redoubled the animosity previously expressed by the North-West Company. In the spring of the year 1816 they collected a still greater force, from various and distant parts, for the avowed purpose of expelling us from the country. In the month of May a number of boats conveying provisions for our use were intercepted and pillaged by command of Alexander McDonell, one of the partners, who openly declared that the North-West Company would not suffer a Colony to exist at Red River, and that if the settlers dared to resist, the ground should be drenched with their blood. The Indians in the vicinity, having heard of the approaching danger, came and offered to fight for us, but our Governor, Robert Semple, declined their services, being unwilling that under any circumstances the arms of savages should be raised against his fellow-subjects. On the nineteenth of June about seventy servants of the North-West Company on horseback, disguised and painted like Indians going to war, suddenly invaded the settlement, and carried off as prisoners such of us as had not time to escape. Anxious to enable us to retreat to the Fort, our Governor came out on foot with about five and twenty men, and proceeded to the settlers' lots. The servants of the North-West Company perceived this small party, galloped up, and having surrounded them, sent a messenger to summon them to lay down their arms.

This demand was soon followed by a general discharge of firearms; our friends were overpowered by the superior numbers of their antagonists. The Governor and others, who were at first only wounded, or having ceased firing, and were calling for quarter, were brutally put to death and stripped of their clothing, which the murderers put on their own persons while yet reeking with the blood of their victims.

We shall not attempt to describe the situation in which we were left after this catastrophe—without any adequate means of defence against the merciless ruffians who had thus butchered our friends and relations—our lives were spared only on condition of our quitting the country immediately, and delivering up the property of the Earl of Selkirk and of the Hudson's Bay Company to the clerk of the North-West Company, who commanded on the occasion, and who declared that we owed our lives to his leniency alone, as he had received orders to let none of us escape. Thus driven a second time from the fields we had cultivated, we set out with our wives and children, unarmed and defenceless, and proceeded with a very scanty portion of provisions to commence our voyage to the shores of Hudson's Bay; but we had only proceeded a few miles when we met a number of canoes and boats filled with partners and servants of the North-West Company, accompanied by several persons in military uniform, armed with artillery and muskets, of which the Colonial store had been plundered the year before, advancing to assist the attempt against the Colony, in case the force already sent against it had proved insufficient. They compelled us to wait several days, until they had searched our baggage in quest of papers, breaking open and rifling the trunks, even of our lamented Governor. They imprisoned several of our number, some of whom they tore from their helpless families, without as much as alleging any offence against them. At length, proposing that we should take oaths never to return to Red River, they thus allowed us to proceed on our voyage, but almost destitute of provisions.

More than twelve partners of the North-West Company, who came on this occasion to the scene of these atrocities, expressed their approbation, and bestowed presents on those who had been engaged in them. They appropriated the Colonial store to their own use, caused the breeding cattle and Merino sheep,

which had been brought from England with great care and expense, to be killed and served up at their table, turned their horses, as well as those which they had taken from us, to graze in our cornfields, and burned a schooner which had been built for the use of the settlement.

They went in company with the men who had achieved the deeds of blood to visit the ground where our friends and relatives had been slaughtered, and where some of their bodies were yet lying half-devoured by dogs. Even this, which had drawn tears from those we call savages, excited no compassion in the partners of the North-West Company, but was viewed by them with exultation and even with laughter.

Guided by the hand of Providence, we once more reached our retreat at the north end of Lake Winnipie, where our only hope of subsistence through a tedious and severe winter rested on the daily supply of fish we might obtain from our nets. To the astonishment of every person of experience in the country, though we had no previous skill in the business of fishing, famine was not added to the list of our calamities. Our support was indeed precarious, and our days of mourning were passed in painful anxiety as to what course we should pursue, till, on the approach of spring, we heard that the Earl of Selkirk was on his way back to Red River, and we determined to direct our steps once more to the ruins of our former habitations.

Those of us who arrived first had to collect and consign to a grave the bones of our relatives and friends to which our fellow-subjects had denied the charity of earth.

We are now again labouring to re-establish our dwellings and to till our fields, and if we may be permitted to cultivate them in peace, we entertain no doubt of finding here a happy abode for ourselves and our descendants.

In a country possessed of so many advantages our numbers would soon multiply, and we might cherish the hope of becoming, in the hands of Divine providence, the humble instruments of introducing the benefits of civilization, with the light of our holy religion, into regions where they have been hitherto unknown. But unless the protection of His Majesty's Government be extended to us, we may be again exposed to the machinations of the same men whose hands are so deeply imbedded in the blood of their fellow-subjects, and under the iron dominion of a lawless association, oppressive alike to the native Indians and to all other inhabitants, this fine country may be doomed to lie waste, a scene of crimes disgraceful to the British name.

Under these circumstances, we most humbly solicit that the effectual protection of His Majesty's Troops may no longer be withheld from this part of His Dominions, and that some establishment may be speedily formed in it for the administration of civil and criminal justice.

And your Petitioners as in duty bound will ever pray.

Donald Livingston.
George McBeath.
Angus Matheson.
Alex. Sutherland.
George Ross.
Alex. Murray.
James Murray.
John Farquharson.
John McLean.

Alex. McLean.
George Adams.
Martin Jordan.
Robert MacKay.
William MacKay.
Alex. Matheson.
John McBeath.
John Sutherland.
Alex. McBeath.

John Bannerman.	Christia Gunn (widow).
George MacKay.	Alex. McKay.
Alexander Polson.	William Sutherland.
Hugh Polson.	Alex. Sutherland, sen.
Robert McBeath.	Ebenezer Sutherland.
James Sutherland.	Donald Bannerman.
James Sutherland.	Hugh McLean.
William Bannerman.	George Bannerman.
Donald MacKay.	Donald Sutherland.
John Flett.	Beth Beathon.
John Bruce.	John Matheson.
Robert MacKay.	George Sutherland.
William Bannerman, jun.	Margaret McLean (widow).
Roderick MacKay.	

APPENDIX G.

Page 29.—LIST OF SWISS SETTLERS WHO ARRIVED AT RED RIVER IN 1821.

(Taken from Transaction No. 33 of the Historical and Scientific Society of Manitoba.)

[Translation.]

THE SWISS CONFEDERATION,

Under the direction of the central police of the town and republic of Berne, invites all the authorities charged with the maintenance of order for the good of the public, to give liberty of passage to the persons named in the following pages, all residents of Switzerland, to depart for the Red river, in Northern America, passing via Rotterdam, where they will embark under the direction of Captain Rudolphe May of that city, with a recommendation to give them aid and assistance in case of need, which favour will be reciprocated.

This sheet has been delivered for the term of this voyage.

Made at Berne the 3rd May, 1821.

The Director, in his absence,

M. STEIGER, Adjutant;

The Chief Secretary,

M. ROSEHL.

[Then follow the seals and signatures of public officials—"Ministre de Raviere," "Legation des Pays Bas le Maintcendra," "Canton Basel," "Stadt Coblenz."]

Alphonse Humbert Droz, number of family	...	...	4
Abram Perret	"	"	6
Jean Pierre Cr��tlet	"	"	7
Frederic Louis Stram	"	"	7
Veuve Susanne Aberli	"	"	7
Sigismund Flotron	"	"	8
Chretien Rychener	"	"	4
Abram Louis Marchand	"	"	7
Joseph Mundwyler	"	"	1
Benoit Schaub	"	"	1
David Houriet	"	"	2
Veuve Lydie Fournier	"	"	5
Veuve Philippine Droz	"	"	3
Chretien Rothenbuhler	"	"	2
Philippe Schirmer	"	"	1
Samuel Scheidegger	"	"	7

Jean Louis Ginand,	number of family	...	...	1
Rodolphe Wyss	" "	...	...	1
Jean Jaques Simon	" "	...	...	3
Chretien Aebersold	" "	...	...	4
Louis Jaques Ostertag	" "	...	...	1
Pierre Rindisbacher	" "	...	...	7
Louis Engel de Douanne	" "	...	...	1
Jonas Pierre Guinand	" "	...	...	1
Theodore Duboir	" "	...	...	1
Jean Daniel Tissot	" "	...	...	1
Philippe Schirmer	" "	...	...	1
Jean Nicolas Longchamp	" "	...	...	1
Benjamin Ligier	" "	...	...	3
Aaron Dubach	" "	...	...	5
David Hoerner	" "	...	...	7
Victor Robert	" "	...	...	1
Frederic Dianion	" "	...	...	1
Alfred Quinche	" "	...	...	1
Frederic Cuhe	" "	...	...	1
Julien Sunier	" "	...	...	1
Margerite Grimm	" "	...	...	1
Jean Duwmun	" "	...	...	1
Frederic Henri Diaion	" "	...	...	1
Jean Heber	" "	...	...	4
Salome Knechtly	" "	...	...	2
Caterine Bunzly	" "	...	...	1
David des Combes	" "	...	...	5
David Monier	" "	...	...	11
Louis Chatelain	" "	...	...	3
Charles Junot	" "	...	...	2
Nicolas Hoffmann	" "	...	...	5
Jacque Langer	" "	...	...	1
Louis Meroz	" "	...	...	2
Edouard Haine	" "	...	...	1
Auguste Guelberth	" "	...	...	1
Charle Gobur	" "	...	...	1
Jean Kocher	" "	...	...	1
Edouard Piaget	" "	...	...	1
Jacque Lamblet	" "	...	...	1
Jean Weiss	" "	...	...	3
Mme. Jonas Pierre de Guinand	" "	...	...	2
Total		...	...	165

APPENDIX H.

Page 29.—“TERMS” BETWEEN LORD SELKIRK AND THE SWISS SETTLERS.

Terms on which the Earl of Selkirk will dispose of portions of the lands described in the annexed papers to persons who may be willing to settle upon the said land with their families, and who may be willing to subscribe to the annexed conditions (a) of settlement.

1. To persons possessed of some property, and willing to purchase land free from all rent or annual payment, he will dispose of lots containing not less than 100 acres, and not exceeding 500 acres, for each family at 9s. per acre, for which price 1s. 3d. to be paid down previous to being put in possession of the lands, and the remainder in three equal annual instalments with 5 per cent. interest on the portions remaining unpaid from the time possession is given of the lands until the same be paid. If the whole price is paid to the Earl of Selkirk or his attorney, Andrew Colville, Esq., previous to embarkation, a deduction of 20 per cent. on the aforesaid price of 9s. per acre will be made to such persons. Lord Selkirk will provide, at moderate price, and at reasonable credit if required, provisions, tools, and agricultural implements, and other things necessary to enable the settlers to establish their families on their lands.

2. To persons who may prefer paying an annual rent for their lands, he will dispose of lots of land containing 100 acres for each family on a lease for ever at the following rent:—

For the first year commencing from the time at which possession may be given, no rent will be charged.

For the second year 20 bushels of wheat.

For the third year 30 bushels of wheat.

For the fourth year 40 bushels of wheat.

For the fifth and all future years 50 bushels of wheat, payable in kind.

If the possessor of the lot should wish to relieve himself from the said annual rent, he shall have the privilege of doing so at any time he pleases upon paying 500 bushels of wheat in one payment. To these last-mentioned persons Lord Selkirk will furnish, at his own expense, during the first nine months after their arrival at Red River, such assistance in provisions, as with their own industry and exertions, as they shall be directed by the agent of the Earl of Selkirk, may be necessary to maintain them, they always observing and obeying such rules and directions as shall be given by such agent in that behalf. To such last-mentioned persons, Lord Selkirk will provide potatoes and grain, to be repaid in kind out of the first crop. He will also provide at moderate

(a) These “annexed conditions” cannot be found.

prices, tools and agricultural implements, and other things necessary for the establishment of the families on their lands, to be repaid with interest at the rate of 5 per cent. per annum at the end of three years. A Catholic Mission from the Catholic Bishopric of Quebec is already established at the Red River Settlement, and a clergyman of the Church of England proceeds to the settlement next spring. If a few Protestant Swiss families should purchase lands on the above terms, Lord Selkirk will convey a lot of 300 acres for the use of a clergyman, and a lot of 100 acres for the use of a schoolmaster free of all rent or price; but on the condition that whenever these persons shall die, or cease to perform their several duties, the lots of land must be surrendered to their respective successors; and for every district of 10,000 acres which may be settled, Lord Selkirk will make similar allotments of lands for the use of a clergyman and a schoolmaster.

To persons who may be willing to purchase lands on either of the above terms, and who shall pay for each person of 16 years of age and upwards £20 sterling for each child of 10, and not exceeding 16 years of age, £13 6s. 8d. sterling, and for each child of 2, and not exceeding 10 years of age £10 sterling, Lord Selkirk will provide proper conveyance and provisions from Switzerland to Rotterdam, and ample ship-room in a good and sufficient vessel with good wholesome provisions for the voyage from Rotterdam to Hudson's Bay, and also proper boats and provisions for the conveyance by the rivers and lakes, from York Fort, or Fort Nelson in Hudson's Bay, to the settlement on the banks of the Red River. The aforesaid passage money to be paid as follows, viz. one-fifth part to be paid to the agent appointed to conduct the settlers from Switzerland to Rotterdam, and the remaining four-fifths to be consigned in the hands of a respectable banker at Rotterdam (to be hereafter agreed upon and named), payable to the order of the said Earl of Selkirk, or his attorney, Andrew Colville, Esq., upon the embarkation of the settlers at Rotterdam.

Observations by Mr. Gate.

On the first. It would appear to me that from three-fourths of a dollar to one dollar and a quarter per acre would be quite a sufficient price for purchasers in the early periods of the settlement. The medium price will thus be one dollar.

On the second. It would appear to me that for those who should prefer paying rent annually to purchasing lands, the following terms would be sufficiently high, viz. :—

The first year free of rent.

The second year 5 bushels of wheat per 100 acres.

The third year 10 bushels of wheat per 100 acres.

The fourth and all remaining years 15 bushels of wheat per 100 acres.

APPENDIX 1.

Page 59.—WILL OF THE EARL OF SELKIRK.

The will of Lord Selkirk is comprised in two documents; the first a "testamentary trust disposition," executed, according to the law of Scotland, at Edinburgh, on August 20, 1806; and the second, a "supplementary trust disposition and settlement," executed at London, on August 7, 1819; and both proved in the Prerogative Court of the Archbishop of Canterbury, on June 6, 1820, when his effects were sworn "under £35,000." When the first instrument was executed, he had not acquired Assiniboia from the Company, so it related only to his lands in Lanarkshire, and "those lands in the Island of St. John's, *alias* Prince Edward's, known by the name" of lots or townships numbers ten, thirty-one, thirty-two, fifty-seven, fifty-eight, sixty, sixty-two, one-half of twelve, one-third of fifty-three, and one-third of fifty-nine, "together with all those lands located in my name and granted to me in the Province of Upper Canada, as also a tract of land in the State of New York, acquired by Henrietta Maria Colden from William Constable, Esqre, of the City of New York, and by me from the said Henrietta Maria Colden, consisting of five thousand acres or thereby lying on the banks of Lake Ontario, at the mouth of Great Salmon River, as more particularly described in the title-deeds to the same," etc. The trustees were Sir James Hall, Bart., of Dunglass, Sir James Montgomery, Bart., of Stanhope, Captain Peter Halkett, of the Royal Navy, Adam Maitland, Esquire, of Dundrennan, and Dugal Stewart Esqre, Professor of Moral Philosophy in the University of Edinburgh, who were empowered after the testator's death to immediately enter into possession of the said lands, "to remove tenants therefrom, and to let tracks thereof for any period not exceeding fifteen years," after which elaborate provision was made for sale. By the last clause, the trustees were directed to be bound by the instructions which should be contained "in a separate paper or deed under my own hand, to be written at any time of my life, and which shall specially refer to the present trust deed," which was to stand in so far as not so revoked or altered.

Thirteen years afterwards the second "disposition" was executed, reciting that the first, having been executed according to the law of Scotland, was insufficient to convey to the trustees the lands in Prince Edward's Island, in Upper Canada, in the United States, or "a certain tract of land called 'Ossinioboa' since acquired by me from the Governor and Company of Adventurers of England trading into Hudson's Bay;" and, in order to remedy that defect, appointing John Halkett, of Seymour Place, Curzon Street, in the Parish of St. George's, Hanover Square, Esquire, Andrew Colville, of Ochiltree and of Crommie, in the county of Fife, and of Leadenhall Street, in the City of London, Esquire,

Peter Wedderburn, of Islabank, in the County of Forfar, Esquire, and James Wedderburn, Esquire, His Majesty's Solicitor-General for Scotland, to be trustees along with those already appointed. On July 1, 1820, Sir James Hall, Admiral, formerly Captain, Peter Halkett, Dugald Stewart, and Peter Wedderburn renounced and disclaimed this trust in favour of the surviving trustees. Power was given to the trustees to sell the estate in North America, and also such part or parts of the Scotch estate as could be sold with least disadvantage to the remaining part, "such sales to be made as to any part of such estates not situated in Scotland by public sale or private bargain, as my said trustees shall think proper, and as to any part of such estates situate in Scotland, by public auction," after due publication in specified newspapers. The new trustees were clothed with the same powers as though they had been originally appointed, and it was declared that the first disposition "and these presents shall be read together, and that these presents shall receive effect in the same manner as if all that is herein contained had made part of the said trust disposition."

All these documents are duly recorded in the Colony Register A.

APPENDIX J.

Page 62.—GOVERNOR BULGER'S ANSWERS TO THE BISHOP OF ST. BONIFACE'S
QUESTIONS IN REGARD TO LANDS AT RED RIVER.

Fort Douglas, September 10, 1822.

Sir,

I have the honour to transmit to you a reply to the several questions which, in the name of Monseigneur the Bishop, you were pleased to submit, for my consideration, in your letter of the 5th instant.

First Question.

Upon what condition is land actually granted? Is there anything fixed on the subject for the future? Is the rent redeemable for a certain price? Are there any "droits" to be payed upon the land changing proprietors?

Answer.

There is one condition annexed to all grants of land in Assiniboia, which is that the grantee shall settle upon the land and cultivate a certain portion of it.

A large proportion of the present settlers are to revive their allotment grants. Many of the Canadians are bound, by their engagements, to pay an annual rent of five bushels of wheat per hundred acres, and this rent can neither be raised nor lowered. Their engagements contained a stipulation that they might, at any time purchase their land (that is, the hundred acres) by paying two hundred dollars. A new regulation with respect to the price of land has, however, been established, the benefit of which may be extended to them if they should be disposed and have the means to purchase: the price now fixed is five shillings sterling per acre. The rent to be paid by all new settlers, including the Swiss, is as follows:—

The first and second year no rent will be demanded.			
The third year the rent will be 10 bushels of wheat per 100 acres.			
The fourth year, 15 bushels of wheat per 100 acres.			
The fifth year,	20	"	"
The sixth year,	20	"	"
The seventh year,	20	"	"
The eighth year,	20	"	"
The ninth year,	20	"	"
The tenth year,	20	"	"

At the expiration of the tenth year from the first occupation of the land, the rent will be subject to new regulation.

When a settler shall have paid for his land, and fulfilled the conditions of settlement upon which it was granted to him, he will be at liberty, if not indebted to the Earl of Selkirk's estate, to sell or dispose of his land, with its improvements, to whom, and in what manner, he pleases; and I am not aware of any "droits" to be paid by him upon so disposing of his own property.

Second Question.

Would there be any objection to our conceding lands upon the River Seine, at a fixed rent, not redeemable, with the rights of "lods et ventes," as the Seigneurs concede in Canada?

Answer.

Lord Selkirk, when he made extensive grants of land in this country, never intended that the receivers of such grants should look to him either for settlers or funds for the improvement of the same. And the executors expect that no inducement will be offered, no encouragement given, to any of the settlers to break the engagement which they entered into with his lordship or his accredited agents.

Any person not under an engagement to take land from his lordship may purchase, or rent, land from the Roman Catholic Mission. The right of exacting "lods et ventes," such as is possessed, under the French or Feudal Laws, by the Seigneurs in Lower Canada, is not recognized, and, I may say, will never be permitted to be exercised, within the territory granted by the Hudson's Bay Company to the Earl of Selkirk.

Third Question.

Are the de Murons obliged to take land solely from Lord Selkirk, or may they take land where they please—for example, upon the land appertaining to the Roman Catholic Mission?

Answer.

The de Murons are amongst the number of those under engagement to Lord Selkirk.

Fourth Question.

Is it certain that Mr. Halkett has directed the interest due to Lord Selkirk's estate to be remitted, and a deduction of 20 per cent. to be made upon the debts? Will the interest be exacted upon debts contracted this and future years?

Answer.

The executors have remitted the interest charged to the settlers upon debts due by them on the 31st of May, 1822, and they will, in this year's account, receive credit for the same. A deduction of 20 per cent., or four shillings in the pound, will likewise be made upon the payment of the principal sum of such debts in this way: When a settler pays £5 of his debts, he will be credited in the Colony accounts with £6. No interest will be charged upon the debts contracted during this year; but as the price of goods has been lowered since the 1st of June last, Lord Selkirk's executors will be obliged, in justice to his lordship's estate, to require the payment of interest upon all debts contracted after the 31st of May, 1823.

Fifth Question.

If the freemen of Pembina establish themselves as inhabitants at the Forks, will they be treated like other settlers?

Answer.

Until I receive Mr. Halkett's determination with respect to Pembina, I can give no answer to this question.

Sixth Question.

What is the fixed price which the settlers will be allowed for different grains in payment for their debts? What is the fixed price for potatoes?

Answer.

For whatever grain the settlers may give in payment of their debts to Lord Selkirk's estate, they will receive credit in their accounts as follows: for wheat, 10s.; barley, 7s. 6d.; and peas, 7s. 6d., per bushel. In the tariff established by Mr. Halkett, potatoes are not included, and I have no authority to establish any fixed price for that article.

Seventh Question.

Can you take, in payment of our debts, the orders of different inhabitants who are indebted to us, and cannot pay us in any other way than by charging them with the same in the Colony accounts?

Answer.

As the custom of accepting orders drawn by persons indebted to Lord Selkirk was found to be attended with very serious consequences to his lordship's estate, the executors have prohibited the continuance of such a practice. The Roman Catholic Mission, it is presumed, can recover debts due to it by the settlers, especially by those under its influence, and with far greater facility than we could do, were we to assume such debts.

Eighth Question.

Is there any hope of seeing money put in circulation in the Colony this year?

Answer.

Having written on this subject to Mr. Halkett, I expect that, upon the arrival of the boats from York Factory, notes (or bonds) of the Hudson's Bay Company will become the circulating medium in the Colony.

Ninth Question.

Does it appear that in lieu of the six days' labour given by the settlers to the clergy, there will be any objection to our exacting the tythe, such as it is fixed in Canada, at the rate of one-twenty-sixth?

Answer.

It is one of the established regulations expressed in the printed deeds, to be issued to all persons holding land in Assiniboia, that they shall give six days' labour annually to the clergyman to whose communion they may belong; and the power of annulling, or even of altering, this regulation rests not with me. Had this question been proposed in time, I would have submitted it to Mr. Halkett, who possessed both the power and inclination to sanction any private arrangement which might be agreed upon between the clergy and the settlers; but now, all that I can do is to recommend the subject, which I shall do by the earliest opportunity, to the consideration of the executors in England.

I have the honour to be,

Sir,

Your obedient servant,

A. BULGER.

The Reverend
Monsieur Destroismaison.

APPENDIX K.

Page 77.—LIST OF PENSIONERS WHO APPEAR TO HAVE BEEN ENROLLED AND TO HAVE PROCEEDED TO FORT GARRY, IN THE HUDSON'S BAY TERRITORY, FOR SERVICE AT THAT STATION IN THE YEARS 1848 AND 1850.

1st Draft.

Rank in Local Company.	Regiment from which Pensioned.	Name.
Private	51st Foot	Robert Shepheard (? Sheppeard)
"	54th "	James Sheridan
"	6th Dragoons	John Smyth
"	31st Foot	William Smith
"	5916, R.M.	John Smith
"	6245, R.M.	William Spratt
"	98th Foot	William Stevens
"	29th Foot	Charles Stodgall (? Stodgell)
"	83rd Foot	Thomas Throne
Colour-Sergeant	3450, R.M.	James Rickards
Sergeant-Major	77th Foot	Michael Nowlan
Sergeant	69th "	William Martin
Corporal	5th Battery R.A.	Robert Bailey
"	Rifle Brigade	James Doherty
"	83rd Foot [panies	Patrick Molloy (or Malley)
Private	Newfoundland Com-	George Anderson
"	" "	James Ashford
"	1821, R.M.	George Antill
"	1st Foot Guards	William Brown
"	53rd Foot	William Chart
"	5th "	Michael Connell
"	94th "	Thomas Corrigan
"	17th "	Martin Dolan
"	75th "	James Duffin
"	83rd "	John Eagan
"	84th "	William Flynn
"	37th "	Joseph Gasden
"	5839, R.M.	John Hamilton
"	5672, R.M.	Thomas Helier (? Hillier or Hellier)
"	89th Foot	John Irvine
"	84th "	Edward Kenny
"	5th "	Patrick Lelis (or Lillis)
"	66th "	James McCormick
"	10th Battery R.A.	Thomas Morrison

1st Draft—continued.

Rank in Local Company.	Regiment from which Pensioned.	Name.
Private	5th Dragoon Guards	James Moyses
"	83rd Foot	Michael Murphy
"	17th "	James Mulligan
"	12th "	Owen O'Donnell
"	61st "	Thomas Oakes
"	12th Dragoons	Joshua Parks (or Parkes)
"	3168, R.M.	Thomas Picksley
"	4th Battery, R.A.	Robert Ramsay
"	3rd Foot Guards	George Rice
"	46th Foot	Joseph Rodway
"	3298, R.M.	James Roper
"	3558, R.M.	James Rowley
"	93rd Regiment	Robert Ross
"	91st "	James Sangster
"	4th Dragoons	John L. Sellwood
"	5th Dragoon Guards	Edward Sharp (or Sharpe)
"	94th Foot	William Sharp
"	Sappers	George Turner
"	9th Foot	George Walsh
"	1st Battery R.A.	Alexander Watson
"	5th Foot	George Wells
"	84th "	George Wild

2nd Draft.

Private	4th Dragoons	Patrick Ryder
"	3rd Foot	John Mullany
"	6th "	Peter Clancy
"	7th "	Joseph Warrice
"	9th "	Philip Maguire
"	15th "	Andrew Murphy
"	17th "	John Butts
"	31st "	Joseph Armstrong
"	41st "	John Green
"	43rd "	John Kennall
"	47th "	Bernard Dirnan
"	55th "	John Gahagan
"	78th "	William Allan
"	81st "	James Armstrong
"	86th "	Pierce Barron
"	87th "	Andrew Connell
"	315, E.I.C.	John Barry
"	338 "	Patrick Collins
"	161 "	James Finn
"	414 "	Thomas McDonald

APPENDIX L.

Page 78.—[The following is a copy of the conditions contained in the pamphlet which accompanied War Office Circular Letter of April 5, 1848, ¹¹⁵⁹¹⁰.]

CONDITIONS ON WHICH IT IS PROPOSED TO ENROL PENSIONERS FOR SERVICE AT
FORT GARRY, IN THE TERRITORY OF THE HUDSON'S BAY COMPANY, NORTH
AMERICA.

The force intended for this service will, at present, consist of only one Company, of sixty privates, with the usual proportion of non-commissioned officers, and a drummer and fifer.

The candidates must be men of good character and industrious habits, whose age does not exceed forty-five years. Their minimum height is not to be less than five feet six inches, and they must be of a robust frame, and medically approved of, as fit for the occasional military duties required. Ten privates of the Company will be pensioners from the Royal Artillery, ten from the Cavalry, and the remainder will be pensioners from the Infantry.

If the other qualifications of the candidates are satisfactory, no objections will be made to their enrolment on the ground of their being married men, or having families (provided the number of their children does not exceed three), but a preference will be given to those who have smaller families.

The candidates approved of will be enrolled to serve for seven years, on the following terms:—

They will receive pay, at the rate of 1s. 3d. per day for a Private, 1s. 6d. for a Corporal, and 1s. 10d. for a Sergeant, in addition to pension, from the period they are called on to leave their homes till embarked, with conveyance at the public expense for themselves and their families to the port of embarkation.

They will receive a free passage to Fort Garry, for themselves, their wives, and their families, with rations for the whole, in the proportions usually issued on ship-board, and for which no deduction will be made from their pensions.

They may receive an advance of two months' pension on embarkation, with a further advance of one month's pension for each child, to be applied under the direction of the Officer placed over them, in purchasing the necessary outfit for the voyage.

On arriving at Fort Garry, each pensioner will be provided with quarters for himself and family, either in the Fort, or the immediate vicinity thereof. They may, with the consent of their Officer, provide quarters for themselves, if they prefer it, but they must not go beyond two miles from the Fort for this purpose.

Each pensioner will also be entitled to a temporary grant of land, not exceeding twenty acres to a Private, thirty to a Corporal, and forty to a Sergeant; the ground to be of a description fit for cultivation, and within two miles of the

Fort. On commencing the occupancy thereof, they will receive such an advance of money as may be found necessary for providing articles of furniture, cooking utensils, stock, etc., under the direction of their Officer.

All advances made from pension are to be repaid by the application of the whole pension while on ship-board, and one-third after landing, until the debt is cleared off.

From his embarkation on ship-board, till he arrive at Fort Garry, no pensioner thus enrolled will be entitled to pay; but thereafter, till the 1st day of August, 1849, he will, if a Private, receive from the Hudson's Bay Company an allowance of 7s. per week in addition to pension, and 3s. 6d. per week for the following year; in return for which, he will be liable to be employed, without further remuneration, during three days of each week in the first period, and during six days in each month during the second period, either on public works or in drilling militia, or such military or other duty as the Governor of the Settlement may direct. Corporals to receive 1s. per week, and Sergeants 2s. per week extra during the first period, and half those amounts during the second, on the same conditions.

Any pensioner, however, who prefers private employment may, with the consent of his officer, be relieved from this obligation, provided he gives a fortnight's notice, and abandons his claim to the rates of pay before specified; but such employment must not remove him to a greater distance than two miles from head-quarters, and he is always to be liable to recall, if the defence of the station is found to require it.

In consideration of the expense incurred in sending out these pensioners and their families, and providing them with a residence and land, they will also be bound to attend military exercise, without pay, for twelve days in each year; and on every Sunday for muster, under arms, at church parade.

If called on to serve during any other periods than those above referred to, in defence of the settlement, they shall be entitled to the regulated rates of pay for the same ranks in Her Majesty's army, in addition to pension; such pay to be defrayed by the Hudson's Bay Company in the first instance, and afterwards repaid by the British Treasury.

In the event of any pensioner thus enrolled not attending when called out for these duties, he will be liable to the penalties of desertion, in addition to forfeiture of pension.

On the termination of the seven years' service for which the enrolment is made, the land occupied by the pensioner will become his absolute property, provided he has fulfilled the conditions of his agreement; and he shall, thereafter, be subject to no further military duty than may be exacted from any other resident in defence of the settlement.

The Hudson's Bay Company are, however, to have the option, within one year of the termination of the service, of resuming possession of the land, on paying the pensioner the ascertained value thereof at the time, including the buildings and crop on the ground; or if the pensioner prefer it, he may receive a fresh grant, at a greater distance from the Fort, of treble the extent.

In the event of death before the termination of the seven years, the grant of land will devolve on the pensioner who may fill the vacancy; but should any improvements have been made thereon, the same shall be valued by his Officer and paid to his family out of a stoppage to be made from the pensioner succeeding thereto; and till the arrival of such pensioner, the family of the deceased shall be permitted to occupy the ground.

Each pensioner shall receive similar arms and equipments to those which have been issued to the enrolled pensioners in this country, as also a great coat, coatee, pair of trousers, and cap, to be worn on those occasions when he is out on duty, and which will be renewed once in every third or fourth year, as may be required.

Each pensioner on being enrolled shall receive the sum of £1, to be applied under the direction of his Officer in providing him with the following articles.

One fatigue jacket,
One pair of boots,
Two shirts,
Two pairs of socks,
One stock;

and which store of necessaries he shall be bound to keep up in future years without any further issue of enrolment-money; as also a sufficiency of warm clothing suitable for the winter of that climate.

In the event of the death or removal from the force of any pensioner thus enrolled before the expiration of the period for which his clothing has been issued, it shall revert to the public, to be made available for the equipment of his successor.

Medical aid will be provided at the expense of the Hudson's Bay Company for the pensioners, and their wives and families.

In the case of death, an allowance of £1 1s. will be made by the British Government, to cover the expense of funeral, etc., of the pensioner.

As the service exacted in virtue of this enrolment will be of rare occurrence, and will only continue for a few days at a time, it is not to reckon for increase of pension; but when employed in the defence of the settlement, these pensioners shall, in the event of being wounded or disabled in the execution of their duty, be allowed the usual increase of pension as for wounds received in action.

Every pensioner enrolled in this force will, during the continuance of the seven years for which he is engaged, be subjected to the provisions of the Mutiny Act and Articles of War; but all minor offences may be punished by such fines, or by expulsion from the force, as the Governor of the Settlement for the time being may direct, in which case the offender will be deprived of his residence and allotment.

The annual periods of exercise will be fixed by the Governor of the Settlement for the time being; and, except on that occasion and the others before referred to, none of the pensioners shall be called out either for exercise or defence, except by him or persons holding his authority for that purpose; but when so called out, they shall be placed under the General or other superior Officer in command of Her Majesty's forces in the Settlement, in the same manner in all respects as if they formed a part of the regular forces of Her Majesty's army.

War Office,
April 3, 1848.

APPENDIX M.

Page 81.—SCHEME SHOWING SUB-DIVISION OF LOT NO. 1211 (POINT-A-PELTIER)
AMONGST FORT GARRY ENROLLED PENSIONERS, 9TH NOVEMBER, 1852.

Orig. No. of Lots.	No. of Chains.	No. of Acres.	Name of Occupant or Proprietor.	Remarks.
1	1½	2	H. B. Co.	NOTE.—Under this heading will be found particulars concerning the lots in re- gard to the transfer, merger and other dealings, as well as further information which should be consulted by those particularly in- terested.
2	1½	2	John Eagan	
3	1½	3	H. B. Co.	
4	1½	5	John Hamilton	
5	1½	5	Joseph Gasden	
6	1½	5	James Duffin	
7	1½	5	H. B. Co.	
8	1½	10	" "	
9	1½	10	" "	
10	1½	10	William Allan	
11	1½	10	H. B. Co.	
12	2	16	William Flynn	
13	2	16	James McCormick	
15	2	16	Robert Shepherd	
16	2	16	H. B. Co.	
17	2	16	Peter Clancy	
19	2	16	Andrew Connel	
20	1½	12	John Green	
21	1½	10	William Sharpe	
22	1½	12	John Kennal	
23	1½	13	Patrick Ryder	
24	1½	13	H. B. Co.	
25	1½	13	" "	
26	1½	13	Bernard Dirnan	
27	1½	13	Philip Maguire	
28	1½	12¾	Michael Connel	
29	1½	17	Thomas Corrigan	
30	1½			
—	1	9	H. B. Co.	
31	1½	13	" "	
32	1½	13		
33	1½	13		
34	1½	13		
35	1½	12	Martin Doolan	
36	1	12	Andrew Murphy	
37	1	12	John Smith	
38	1	12	James Roper	

Orig. No. of Lots.	No. of Chains.	No. of Acres.	Name of Occupant or Proprietor.	Remarks.
39	1½	14	George Wild	NOTE.—Under this heading will be found particulars concerning the lots in re- gard to the transfer, merger, and other dealings, as well as further information which should be consulted by those particularly in- terested.
40	1½	14	J. Moyses	
41	1½	14	George Rice	
42	2	17	Robert Ramsay	
43	2	17	John Smith, 2nd	
45	2	18	Thomas McDonald	
46	1½	14	Joseph Warrice	
47	} 3	28	Thomas Picksley	
48				
49	} 3	28	Edward Sharpe	
50				
51	2	20	Major Caldwell	
53	2	20	John Barry	
54	2	20	Major Caldwell	

[NOTE.—Copied from two sheets in the Dominion Land Commissioner's Office at Winnipeg, September 19, 1893.—A.M.]

APPENDIX N.

Page 86.—REPORT OF THE CASE OF TEMPLETON *v.* STEWART, TRIED IN THE QUEEN'S BENCH AT WINNIPEG, IN 1892; TAKEN FROM 3 "WESTERN LAW TIMES REPORTS," pp. 189-194.

TEMPLETON *v.* STEWART.

NOVEMBER 14, 1892.]

[BAIN, J.

Crown patent—Setting aside after investigation by crown—Attorney-General not a party where grant is from H. B. Co. prior to transfer to Canada—Applicability of common law as to married women to Rupert's Land—Law as to sale by married women in 1670—Statute of Limitations—Title by possession.

Bill filed to set aside Crown patent to the north $3\frac{1}{2}$ chains of the inner, and the north 3 chains of the outer 2 miles of lot 19 of the Dominion Government survey of the Parish of Kildonan, granted by the Dominion Government to the defendant, Robina Stewart. The defendant R. D. Templeton was joined as the husband of the deceased mother of the plaintiffs. The river lot 19 corresponds with lot 203 of the Hudson Bay Company's survey. In the H. B. Co.'s land register Robert McKay, one of Lord Selkirk's settlers, appeared as having entered for it and the lot was entered under the column in that register headed "Acres granted by Lord Selkirk," but there was no other documentary evidence of his title. McKay lived on that lot from 1835 to 1853, when he died in possession of it. To the defendant, Robina Stewart, he devised the north $3\frac{1}{2}$ chains of the lot. Plaintiffs, the heirs of defendant Stewart's sister who died intestate in 1882, claimed that Stewart, a married woman, had in 1863 sold the land to their mother, then also a married woman, and she, or they, had ever since occupied it and were in occupation. In 1887, the defendant Stewart applied for a patent to the said inner and outer two miles, and after a full investigation and examination of witnesses under oath before the Dominion Lands Commissioner in Winnipeg, and in spite of the evidence adduced before him by the plaintiffs, and with a full knowledge of the circumstances, the Crown, in February, 1891, granted patents to the said lands to the defendant Stewart, who thereupon applied for a certificate of title and served notice upon the plaintiffs, who filed a caveat, and subsequently, a petition, and finally, on the direction of Mr. Justice Dubuc on the hearing of such petition, this bill, pending the disposition of which the further hearing of the petition was adjourned and proceedings thereon stayed.

One of the conditions of the deed of surrender of the Hudson's Bay Company to the Crown was: "8. All titles to land up to the 8th March, 1869, conferred by the Company, are to be confirmed."

The Attorney-General of Canada was not a party to the bill, and the court

found that there were no fraudulent misrepresentations or contrivances by the defendant Stewart in obtaining the patent. The bill was taken *pro confesso* against defendant Templeton.

Howell, Q.C., Nugent and Archer Martin for plaintiffs.

Culver, Q.C., and Sutherland for defendant Stewart.

Under the state of facts above set out

Held—

1. Robert McKay must be presumed to have been the owner of an estate in fee simple in the lands under the Hudson's Bay Company—*Taylor on Evidence*, 147-51.

2. The lands having been granted by the Hudson's Bay Company before the transfer, and the heirs of Robert McKay being entitled to an estate in fee simple therein before the transfer, there was no estate left in the Crown, represented by the Dominion Government, to grant, and the patent could have no further effect than to confirm the grant in fee already made by the Company. "The estates and interests of the several parties in the land were acquired independently of, and prior to the issue of the patent, and in my opinion the patent has not really affected the legal interests and rights that were acquired in the property under laws in force in the province. These interests and rights, whatever they were, come under the head of 'property and civil rights,' and this court is bound to recognize and enforce them. If the view I take of the case is correct, then, for some time previous to and at the time the patent was issued, the legal and beneficial title to the land on the inner lot was vested in the plaintiffs, or Alexander Templeton. By some means the defendant, Stewart, has obtained a Crown patent for the land that apparently vests the legal estate in it in her, and I think the court has jurisdiction to declare and decree that, notwithstanding this Crown patent the land is not hers, but the plaintiffs', and to order her to execute conveyances of the land to them."

3. The outer two miles stand on a different footing, there being no evidence of a grant of them to McKay, and the only evidence of possession being the exclusive exercise of the right of cutting hay thereon by Robert McKay and his heirs for the period in each year during which the laws of Assiniboia formally recognized that right in the owners of the river lots; if the land became vested in the Crown under the deed of surrender, no one could acquire a title against the Crown by possession under the statute of Limitations.

4. The laws in force here prior to the transfer being the law of England as it existed on May 2, 1670 (date of the Hudson Bay Company's charter), a sale of land could be by parol as the Statute of Frauds was not then in force; the sale here being of property not separate estate by a married woman, was not objectionable on the ground of being a parol sale, yet could not be a valid one, even with the consent of her husband, as the Act for the Abolition of Fines and Recoveries, 1835, was not in force at the time of the sale; the contention of plaintiffs' counsel that so much of the common law of England as prevented a married woman from conveying her property with the consent of her husband was inapplicable to the local conditions of Rupert's Land in 1670, and was consequently not introduced by the early colonists, is over-ruled. "This rule of disability was an essential part of the common law, and expressed the spirit and policy of the English people and English law on the legal *status* of married women, and it seems to me

to have been applicable wherever English subjects were living subject to English law and quite independent of local conditions"; the legal existence of the wife was deemed to be merged in the husband and consequently she was under a total disability to contract—*Cahill v. Cahill*, 8 App. Ca. 428; *Emery v. Wase*, 5 Ves. 845; *Nicole v. Jones*, L. R. 3 Eq. 696, and *MacQueen on Hus. and Wife*, 63-5, 284-5.

5. Under ordinary circumstances when a man and his wife are living together and occupying land, the presumption is that the occupation is that of the husband and not of the wife, and where there is a parol gift to a married woman and the land is occupied and worked by her husband, she residing on the property with him as his wife, the title acquired by length of possession is that of the husband and not of the wife—*Vincent v. Morley*, 15 N. B. 375.

6. Defendant Stewart married before the Married Woman's Property Act took effect and without a settlement, and as her husband down to the time the Act took effect had not taken possession of the land it was then her separate property, and whatever interest the patent conveyed to her would also be separate property, and she might then be sued as a *femme sole* without her husband.

7. The plaintiffs were, or rather their father, Alexander Templeton (who by his marriage had acquired an estate in freehold in his wife's land the effect of which was to give him the actual ownership of the land during the coverture) was entitled to the inner 3½ chains by virtue of possession and the Statute of Limitations, R. S. M., cap. 89, s. 4—*Harris v. Mudie*, 7 A. R. 414—but the father by filing the bill as next friend for two of his children showed that he was willing to give up to the plaintiffs any interest he had in the lands, and as there would be no surprise and as it could make no difference to the defendant, except as regards the question of costs, and expenses of further proceedings would be avoided, there would be a decree, upon the plaintiffs filing a release to them from Alexander Templeton, declaring Robina Stewart a trustee for the plaintiffs, according to their several interests, of the inner 3½ chains and directing her to execute conveyances of the respective shares.

Question of costs reserved till after release is put in.*

* NOTE.—This release was put in, but before the decree was taken out the judge subsequently, when the question of costs came up, refused to allow plaintiffs to take out the decree, and directed that the bill should be dismissed, but without costs, leave being given to Alex. Templeton to proceed as he might be advised. 4 W. L. T. R., 62. The judge did not, however, in any way change or alter the opinions expressed by him in his judgment. Templeton immediately took proceedings to establish his claim, the defendant's interest was put up for sale to satisfy the costs of her own solicitors, and Templeton bought it in as the cheapest way of settling the action: the lands are now in his undisturbed occupancy.

APPENDIX O.

Page 92.—HAY PRIVILEGES IN ASSINIBOIA.

Copy of a Report of a Committee of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council, on the 17th April, 1874.

On a Memorandum dated the 3rd April, 1874, from the Honourable the Minister of the Interior, stating in reference to the report dated 23rd February last, by the Hay and Common Commissioners, that although he had been previously under the impression that the hay right on the outer two miles could in no way be considered as anything but an easement, and as such not entitling the parties on final settlement of their claim to anything beyond, at all events, a grant of a portion of the land; yet, on considering the arguments used by the Commissioners, and especially as they are favourably viewed by the Lieutenant-Governor, who, under the Manitoba Act, is specially appointed as the agent of the Government of the Dominion in the settlement of this matter, he is of opinion that the recommendation of the Commissioners is deserving of favourable consideration by the Government.

The following, he states, are the recommendations of the Commissioners, the application of which, it is understood, is limited to the parishes named in the margin, in which, under the Assiniboia law, the hay right was recognized in the outer two miles, that is to say:—

1. That where the outer two miles is (*sic*) not taken up in any way, the owner of each front or river lot in those parishes where the rights existed, should receive a grant of the land in the outer two miles immediately in rear of his lot, such grant to be in full commutation of all rights of common and of cutting hay, claimed in respect of the front lot.

2. As the land elsewhere is not of the same value to the claimants as in their outer two miles, they recommend that in cases where, from the existence of parks or other claims or from any other cause, the whole of the outer two miles cannot be thus granted, the owner of the front lot should receive what is left of the outer two miles in rear of his lot, and scrip, redeemable in unoccupied Government lands, to cover one-half of as much more land as there is in the part of the outer two miles so taken up.

The Minister submits that it should be understood that for the purpose of estimating the amount of scrip in any case, the lands as above should be valued at the Government price of one dollar per acre.

And further, that as regards the claims of commutation of the rights of common and of cutting hay by the people in parts of the parishes of St. Boniface, West, St. Vital, and St. James, where the hay right on the outer two miles was cut off by the junction of the two rivers, as set forth in paragraph 3 of the

Lieutenant-Governor's despatch, dated the 18th March last past, that the same be settled on the same principle, by which such people will be entitled to one dollar and a half in scrip for each acre of land in the river lots respectively owned by them.

That should the settlement recommended above be approved he submits the expediency of adopting some principle by which the general right of cutting hay, which it would appear expedient to concede, had been held and enjoyed by the settlers in the Province should be determined upon.

That with this view, and having given the matter consideration, he recommends as follows:—

That provision be made for the commutation of the right of cutting hay by settlers in Manitoba previous to the transfer, outside of those parishes in which the privilege of the outer two miles was recognized by the Council of Assiniboia, on the following principle, that is to say,—

That each person who may prove to be entitled under sub-section 1, 2, 3, or 4, of section 32 of the Manitoba Act, to a freehold grant from the Crown, shall receive an issue of scrip, the same to be in full commutation of the right of cutting hay and of any and every other right which such person claims or may claim under sub-clause 5 of section 32 of the Act 33 Victoria, chapter 3, of one dollar of scrip for each acre of land for which such person may, as aforesaid, prove entitled to receive a patent.

His Honour the Lieutenant-Governor in paragraph 8 of his despatch, dated the 18th March last, hereinbefore referred to, advises that the dealing with the Point Douglas and St. Boniface Commons should be referred to a special commission, composed of the three judges of the Court of Queen's Bench. This he recommends, as Mr. Bain, one of the Commissioners, he alleges, had already, in his professional capacity, been called on to deal with the question of the Point Douglas Common.

The Minister submits the course advised as above by His Honour the Lieutenant-Governor to the favourable consideration of the Government.

He further recommends that such of the regulations contained in any previous Order in Council providing for the settlement of hay and common rights in Manitoba as may conflict with the mode of settlement above proposed, be rescinded.

The Committee submit the foregoing recommendations for Your Excellency's approval.

Certified.

(Signed)

W. A. HIMSWORTH,
Clerk, Privy Council.

To the Hon.
The Minister of the Interior.

APPENDIX P.

LETTER FROM ALEX. LEAN TO PETER FIDLER REGARDING THE AMALGAMATION
OF THE HUDSON'S BAY AND NORTH-WEST COMPANIES.

London, 21st May, 1821.

Mr. Peter Fidler.

Dear Sir,

I rec'd your esteemed favour of the 14 August last from Norway house. I thank you much for the Information it contained. I shall now, in return, give you such Intelligence as will, I trust, not only be agreeable to you but to every Individual in the Service.

In the first place, all Misunderstanding between the Hon'ble Company and the North West Compan^y is totally at an end.

You are to know that the Hon'ble Company caused it to be announced in the *Gazette* and Daily Papers that a General Board of Proprietors would be held, at their House, on Monday the 26th March last. It was so held; and many of the Hudson's Bay and North West Proprietors attended. Tendency of this meeting was to promulgate that an UNION between the Two Companies had taken place.

I cannot enumerate the Resolutions which unanimously passed on the occasion, let it suffice for me to acquaint you, that it appears to have been a well digested Plan which eventually will tend to the advantage of both Companies.

Mr. Garry a Gent'n of the Hon'ble Committee accompanied by Mr. Simon McGillivray has embarked for New York, from thence to Montreal, in order to proceed to the Company's Settlements, the North West Stations and Red River. If you should see Mr. Garry you will find him a Gent'n in every respect, and deserving respectful attention.

The whole concern will be apportioned into shares to which the North West Agents will be entitled.

I was present at the General Board (being a proprietor), and after the business was concluded a mutual congratulation past between the Governor, etc., and myself; and I sincerely wish every Individual or fellow Labourer in the same Vineyard, in which I was till lately, Joy on the happy Event.

From the Tenor of your Letter I am led to imagine that Mr. Roberts would expect from me the balance of your acc^t as he did last year, the consequence of which has been that I deferred purchasing for you in the Consols, lest it would have interfered with the Commissions you had given him for purchasing various articles for you; I shall therefore not add to your funded property till after I return from my annual visit to Gravesend on the Departure of the Company's Ships.

With wishing you every happiness you can possibly enjoy, in which I am joined by Mrs. Lean and my son Charles, I remain, dear sir,

Your faithful Friend and obed^t Serv^t,

(Signed) ALEX. LEAN.

APPENDIX Q.

Page 19.—DEED OF SURRENDER OF RUPERT'S LAND BY THE HUDSON'S BAY COMPANY TO THE CROWN.

To all to whom these presents shall come unto, or concern, the Governor and Company of Adventurers of England, trading into Hudson's Bay, send greeting.

WHEREAS the said Governor and Company were established and incorporated by their said name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," by Letters Patent granted by His late Majesty King Charles the Second in the twenty-second year of his reign, whereby His said Majesty granted unto the said Company and their successors the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks, and sounds in whatsoever latitude they should be, that lay within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid, that were not already actually possessed by, or granted to, any of His Majesty's subjects, or possessed by the subjects of any other Christian Prince or State, and that the said land should be from thenceforth reckoned and reputed as one of His Majesty's Plantations or Colonies in America called Rupert's Land, and whereby His said Majesty made and constituted the said Governor and Company and their successors the absolute Lords and proprietors of the same territory, limits, and places aforesaid, and of all other the premises saving the faith, allegiance, and sovereign dominion due to His said Majesty, his heirs and successors for the same, and granted to the said Governor and Company and their successors, such rights of Government and other rights, privileges, and liberties, franchises, powers, and authorities in Rupert's Land as therein expressed. And whereas ever since the date of the said Letters Patent, the said Governor and Company have exercised and enjoyed the sole right thereby granted of such trade and commerce as therein mentioned, and have exercised and enjoyed other rights, privileges, liberties, franchises, powers, and authorities thereby granted, and the said Governor and Company may have exercised or assumed rights of Government in other parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia. And whereas, by the British North America Act, 1867, it is (amongst other things) enacted that it shall be lawful for Her present Majesty Queen Victoria, by and with the advice and consent of Her Majesty's most Honourable Privy Council, on Address from the Houses of Parliament of Canada, to admit Rupert's Land and the North-Western Territory or either of them into the Union of the Dominion of Canada on such terms and conditions as are in the Address expressed, and as Her Majesty thinks fit to approve, subject to the provisions of the said Act. And whereas, by the Rupert's Land Act, 1868, it is enacted

(amongst other things) that for the purposes of that Act the term, "Rupert's Land," shall include the whole of the lands and territories held or claimed to be held by the said Governor and Company, and that it shall be competent for the said Governor and Company to surrender to Her Majesty, and for Her Majesty, by any instrument under Her Sign-Manual and Signet, to accept a surrender of all or any of the lands, territories, rights, privileges, liberties, franchises, powers, and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, upon such terms and conditions as shall be agreed upon by and between Her Majesty and the said Governor and Company: provided, however, that such surrender shall not be accepted by Her Majesty until the terms and conditions upon which Rupert's Land shall be admitted into the said Dominion of Canada shall have been approved of by Her Majesty, and embodied in an Address to Her Majesty from the Houses of the Parliament of Canada in pursuance of the 146th Section of the British North America Act, 1867, and that upon the acceptance by Her Majesty of such surrender, all rights of Government and proprietary rights, and all other privileges, liberties, franchises, powers, and authorities whatsoever, granted or purported to be granted by the said Letters Patent to the said Governor and Company within Rupert's Land, and which shall have been so surrendered, shall be absolutely extinguished, provided that nothing in the said Act contained shall prevent the said Governor and Company from continuing to carry on in Rupert's Land or elsewhere trade and commerce. And whereas Her said Majesty Queen Victoria and the said Governor and Company have agreed to terms and conditions upon which the said Governor and Company shall surrender to Her said Majesty, pursuant to the provisions in that behalf in the Rupert's Land Act, 1868, contained, all the rights of Government and other rights, privileges, liberties, franchise, powers, and authorities, and all the lands and territories (except and subject as in the said terms and conditions expressed or mentioned) granted or purported to be granted by the said Letters Patent, and also all similar rights which have been exercised or assumed by the said Governor and Company in any parts of British North America not forming part of Rupert's Land, or of Canada, or of British Columbia, in order and to the intent that, after such surrender has been effected and accepted under the provisions of the last-mentioned Act, the said Rupert's Land may be admitted into the Union of the Dominion of Canada, pursuant to the hereinbefore-mentioned Acts or one of them. And whereas the said terms and conditions on which it has been agreed that the said surrender is to be made by the said Governor and Company (who are in the following Articles designated as the Company) to Her said Majesty are as follows (that is to say):—

1. The Canadian Government shall pay to the Company the sum of 300,000*l.* sterling when Rupert's Land is transferred to the Dominion of Canada.

2. The Company to retain all the posts or stations now actually possessed and occupied by them or their officers or agents (whether in Rupert's Land or any other part of British North America), and may within twelve months after the acceptance of the said surrender select a block of land adjoining each of their posts or stations within any part of British North America not comprised in Canada and British Columbia in conformity, except as regards the Red River Territory, with a list made out by the Company and communicated to the Canadian Ministers, being the list in the annexed Schedule. The actual survey is to be proceeded with, with all convenient speed.

3. The size of each block is not to exceed in the Red River Territory an amount to be agreed upon between the Company and the Governor of Canada in Council.

4. So far as the configuration of the country admits, the blocks shall front the river or road by which means of access are provided, and shall be approximately in the shape of parallelograms, and of which the frontage shall not be more than half the depth.

5. The Company may, at any time within fifty years after such acceptance of the said surrender, claim in any township or district within the fertile belt in which land is set out for settlements, grants of land not exceeding one-twentieth part of the land so set out; the blocks so granted to be determined by lot, and the Company to pay a rateable share of the survey expenses, not exceeding 8 cents Canadian an acre. The Company may defer the exercise of their right of claiming their proportion of each township or district for not more than ten years after it is set out, but their claim must be limited to an allotment from the lands remaining unsold at the time they declare their intention to make it.

6. For the purpose of the last Article the fertile belt is to be bounded as follows:—On the south by the United States' boundary; on the west by the Rocky Mountains; on the north by the Northern Branch of the Saskatchewan River; on the east by Lake Winnipeg, the Lake of the Woods, and the waters connecting them.

7. If any township shall be formed abutting on the north bank of the northern branch of the Saskatchewan River, the Company may take their one-twentieth of any such township, which, for the purpose of this Article, shall not extend more than five miles inland from the river, giving to the Canadian Dominion an equal quantity of the portion of land coming to them of townships established on the southern bank of the said river.

8. In laying out any public roads, canals, or other public works, through any block of land reserved to the Company, the Canadian Government may take without compensation such land as is necessary for the purpose, not exceeding one-twenty-fifth of the total acreage of the block; but if the Canadian Government require any land which is actually under cultivation, or which has been built upon, or which is necessary for giving the Company's servants access to any river or lake, or as a frontage to any river or lake, the said Government shall pay to the Company the fair value of the same, and shall make compensation for any injury done to the Company or their servants.

9. It is understood that the whole of the land to be appropriated within the meaning of the last preceding clause, shall be appropriated for public purposes.

10. All titles to land up to the eighth day of March, one thousand eight hundred and sixty-nine, conferred by the Company, are to be confirmed.

11. The Company is to be at liberty to carry on its trade without hindrance in its corporate capacity, and no exceptional tax is to be placed on the Company's land, trade, or servants, nor any import duty on goods introduced by the said Company previously to such acceptance of the said surrender.

12. Canada is to take over the materials of the electric telegraph at cost price; such price including transport, but not including interest for money, and subject to a deduction of ascertained deterioration.

13. The Company's claim to land under an agreement of Messrs. Vankoughnet and Hopkins is to be withdrawn.

14. Any claims of Indians to compensation for lands required for purposes of settlement shall be disposed of by the Canadian Government in communi-

cation with the Imperial Government; and the Company shall be relieved of all responsibility in respect of them.

And whereas the surrender hereinafter contained is intended to be made in pursuance of the agreement, and upon the terms and conditions hereinbefore stated.

Now know ye, and these presents witness, that, in pursuance of the powers and provisions of the Rupert's Land Act, 1868, and on the terms and conditions aforesaid, and also on condition of this surrender being accepted pursuant to the provisions of that Act, the said Governor and Company do hereby surrender to the Queen's Most Gracious Majesty, all the rights of Government, and other rights, privileges, liberties, franchises, powers, and authorities, granted or purported to be granted to the said Governor and Company by the said recited Letters Patent of His late Majesty King Charles the Second; and also all similar rights which may have been exercised or assumed by the said Governor and Company in any parts of British North America, not forming part of Rupert's Land or of Canada, or of British Columbia, and all the lands and territories within Rupert's Land (except and subject as in the said terms and conditions mentioned) granted or purported to be granted to the said Governor and Company by the said Letters Patent. In witness whereof, the Governor and Company of Adventurers of England trading into Hudson's Bay, have hereunto caused their Common Seal to be affixed, the nineteenth day of November, one thousand eight hundred and sixty-nine.

THE SCHEDULE ABOVE REFERRED TO.

NORTHERN DEPARTMENT, RUPERT'S LAND.

District.	Post.	Acres of Land.	
English River ...	Isle à la Crosse	50	
	Rapid River	5	
	Portage La Loche	20	say 10 acres each end of portage.
	Green Lake	100	
	Cold Lake	10	
	Deer's Lake	5	
		—	190 acres in English River.
Saskatchewan ...	Edmonton House	3,000	
	Rocky Mountain House ...	500	
	Fort Victoria	3,000	
	St. Paul	3,000	
	Fort Pitt	3,000	
	Battle River	3,000	
	Carlton House	3,000	
	Fort Albert	3,000	
	Whitefish Lake	500	
	Lac La Biche	1,000	
	Fort Assiniboine	50	
	Lesser Slave Lake	500	
	Lac St. Anne	500	
	Lac La Nun	500	
	St. Albert	1,000	
	Pigeon Lake	100	
	Old White Mud Fort ...	50	
		—	25,700 acres in Saskat- chewan District.

District.	Post.	Acres of Land.
Cumberland ...	Cumberland House ...	100
	Fort La Corne ...	3,000
	Pelican Lake ...	50
	Moose Woods ...	1,000
	The Pas ...	25
	Moose Lake ...	50
	Grande Rapid Portage ...	100
		50 acres at each end of portage.
		4,325 acres in Cumberland District.
Swan River ...	Fort Pelly ...	3,000
	Fort Ellice ...	3,000
	Q'Appelle Lakes ...	2,500
	Touchwood Hills ...	500
	Shoal River ...	50
	Manitobah ...	50
	Fairford ...	100
		9,200 acres in Swan River District.
Red River ...	Upper Fort Garry, and Town of Winnipeg	{ Such number of acres as may be agreed upon between the Company and the Governor of Canada in Council.
	Lower Fort Garry (including the farm the Company now have under cultivation ...	
	White Horse Plain	
Manitobah Lake	Oak Point ...	50
Portage La Prairie	... ..	1,000
		1,050
Lac La Pluie ...	Fort Alexander ...	500
	Fort Frances ...	500
	Eagle's Nest ...	20
	Big Island ...	20
	Lac du Bonnet ...	20
	Rat Portage ...	50
	Shoal Lake ...	20
	Lake of the Woods ...	50
	Whitefish Lake ...	20
	English River ...	20
	Hungry Hall ...	20
	Trout Lake ...	20
	Clear Water Lake ...	20
	Sandy Point ...	20
		1,300 acres in Lac La Pluie District.
York ...	York Factory ...	100
	Churchill ...	10
	Severn ...	10
	Trout Lake ...	10
	Oxford ...	100
	Jackson's Bay ...	10
	God's Lake ...	10
	Island Lake ...	10
		260

District.	Post.	Acres of Land.
Norway House	Norway House	100
	Beren's River	25
	Grand Rapid	10
	Nelson's River	10
		<hr/> 145
Total in Northern Department ...		<hr/> 42,170

SOUTHERN DEPARTMENT, RUPERT'S LAND.

Albany	Albany Factory	100	635
	Martin's Falls	10	
	Osnaburg	25	
	Lac Seul	500	
East Main	Little Whale River	50	125
	Great Whale River	50	
	Fort George	25	
Moose	Moose Factory	100	145
	Hannah Bay	10	
	Abitibi	10	
	New Brunswick	25	
Rupert's River	Rupert's House	50	120
	Misstassing	10	
	Temiskamay	10	
	Woswonaby	10	
	Meehiskun	10	
	Pike Lake	10	
	Nitchequon	10	
	Kamapiscan	10	
Kinogumissee ...	Matawaganinque	50	60
	Kuckatoosh	10	
Total in Southern Department ...		<hr/> 1,085	

MONTREAL DEPARTMENT, RUPERT'S LAND.

Superior	Long Lake	10	20
Temiscamingue	Kakababeagino	10	
Labrador	Fort Nascopie	75	
	Outposts, ditto	25	
	Fort Chimo (Ungava) ...	100	380
	South River, outposts ...	30	
	George's River	50	
	Whale River	50	
	North's River	25	
	False River	25	
Total in Montreal Department ...		<hr/> 400 acres	

NORTHERN DEPARTMENT, NORTH-WEST TERRITORY.

District.	Post.	Acres of Land.	
Athabasca ...	Fort Chippewyan ...	10	
	Fort Vermilion ...	500	
	Fort Dunvegan ...	50	
	Fort St. John's ...	20	
	Forks of Athabasca River	10	
	Battle River ...	5	
	Fond du Lac ...	5	
	Salt River ...	5	
			605 acres in Athabasca District.
McKenzie River	Fort Simpson ...	100	
	Fort Liard ...	300	
	Fort Nelson ...	200	
	The Rapids ...	100	
	Hay River ...	20	
	Fort Resolution ...	20	
	Fort Rae ...	10	
	Fort du Lac ...	10	
	Fort Norman ...	10	
	Fort Good Hope ...	10	
	Peel's River ...	10	
	Lapierre's House ...	10	
	Fort Halkett ...	100	
			900 acres in Mackenzie River District.
Total in North-West Territory ...		1,505 acres.	

RECAPITULATION.

				Acres.
Northern Department, Rupert's Land	...	...	...	42,170
Southern ditto ditto	...	...	...	1,085
Montreal ditto ditto	...	...	...	400
Northern Department, North-West Territory	...	...	...	1,505
				<u>45,160</u>

INDEX.

- ABORIGINAL TITLE. *Vide* INDIAN TITLE.
- ALLOTMENT LISTS, *102-3*
particulars of, 107-109 (*n.*)
- AMERICAN PLANTATIONS,
charters of various, 3, 4
- AMOS, MR.,
his plan of Red River, 23, 109
- ASSINIBOIA SETTLERS. *Vide* RED RIVER SETTLERS, LORD SELKIRK, AND HUDSON'S BAY CO.
- ASSINIBOIA,
extent of, and grant of, to Lord Selkirk, 5, 6; App. B.
jurisdiction over, reserved by Hudson's Bay Co., 6
conditions attached to grant of, 6
shares of Company's servants in, 6
two meanings of term "District of," 8
surveys. *Vide* SURVEYS.
management of, by Lord Selkirk's executors, 14
by Hudson's Bay Co., 14
cost of, to Lord Selkirk, 14
re-transferred to Hudson's Bay Co. by executors, 15-19
evidence in regard to date, *ib.*
certificate of peaceable possession of, 18
records of. *Vide* RECORDS.
plans of, 23, 109, 111-117
governor of, acts as Lord Selkirk's agent, 43
council of, recognizes squatters and casual occupiers, 66
transfer of land. *Vide* LAND.
- BALSILLIE, JOHN,
evidence as to Register B, 68, 69
missing Selkirk registers, 128, 129
- BALTIMORE, LORD
charter to Maryland, 3, 4

- BANNERMAN, ALEX. AND WILLIAM,
allotment of, 23
- BOUNDARY. *Vide* INTERNATIONAL BOUNDARY.
- BOURASSA, LOUIS,
early settler in Athabasca, 104
- BRITISH COLUMBIA,
rights in, of Hudson's Bay Co., surrendered, 219
- BRUCE, CHARLES GASPARD,
his grant from Lord Selkirk, 62
- BRUCE, JOHN,
his lease from Hudson's Bay Co., and remarks on, 71-75
- BRYDGES, LAND COMMISSIONER,
evidence as to sales in Red River, 69
- BULGER, GOVERNOR ANDREW,
removes French Canadians to Forks, 28
arrives at Red River, and acts as Lord Selkirk's agent, 43
his authority from executors, 43
his power of attorney, 43
his papers at Ottawa, 43 (*n.*), 109
agreements with Swiss settlers, 60, 62
correspondence with Bishop Provencher, 62
Chief Factor Clarke regarding retired servants, Hudson's Bay Co.,
110, 111
- BURBIDGE, MR.,
opinion on Assiniboia tenures, 87
- BURGESS, MR. A. M.,
his errors in regard to Red River tenures, 86, 87
- CALDWELL, LIEUT.-COL., GOVERNOR OF ASSINIBOIA,
comes to Fort Garry with pensioners, 75
evidence on grants to pensioners, 76, 77
leaves Fort Garry, 76
Hudson's Bay Co.'s grant to, 81
- CAMERON, DUNCAN,
notice to quit Forks sent by Governor McDonnell, 10
- CANADA, GOVERNMENT OF,
mistakes made by, in grants in Assiniboia, 2, 22, 83, 84-90
extinction of Indian title, 14, 94, 97-102
acquisition of Rupert's Land by, 19, 84
confirms Hudson's Bay Co.'s titles, 84-89
deals with hay privileges of settlers, 90-92,
grants lands to "original white" settlers, 17, 103
"staked claims," consideration, and eventual recognition of, 105-106
loss of old plans by, 112
- CANADIAN SEIGNORAL RIGHTS
not introduced in Red River, 62

CANADIANS. *Vide* FRENCH CANADIANS.

CARRIERE v. DAGNON,
land case tried at Fort Garry, 66

CERTIFICATES OF SETTLERS
granted by Lord Selkirk's agents, 48-51
nature, and reception in evidence, 50, 51
granted by Hudson's Bay Co., and form of, 70

CHARLES II.
grant to Lord Baltimore, 3

CHELSEA HOSPITAL,
out-pensioners of. *Vide* PENSIONERS.

CHETLAIN, GENERAL A. L.,
particulars concerning Swiss settlers, 29 (*n.*)

CLARKE, CHIEF FACTOR,
in charge of retired servants of Hudson's Bay Co., 110
correspondence with Governor Bulger, 110

COLONISTS. *Vide* RED RIVER SETTLERS.

COLTMAN, COMMISSIONER, *183.*
at Red River, 10, 109

COLVILE, ANDREW,
executor of Lord Selkirk, 43

CONNECTICUT,
plantation or colony of, 3, 4

COUNCIL OF ASSINIBOIA
recognizes squatters and occupiers, 66
minutes of the, 117

DEEDS OF SETTLERS,
Professor Hind's unsuccessful search for, 32
no formal conveyance given generally, 33, 65, 131, 132
registration of, 33
restrictive clauses not enforced, 65
J. H. McTavish's unsuccessful search, 68

DE MEURON, WATTEVILLE, AND GLENGARRY FENCIBLES,
arrival at Red River, and settlement of, 25, 27, 29
many leave, 31, 32

DE MEURON, LIEUT.-COL., THE COUNT,
his regiment, 25

DENNIS, MR. J. S.,
remarks on Assiniboia surveys, 107
work of Colonel Dennis, 115, 116

DUMAS, MICHEL,
his agreement for sale with Hudson's Bay Co., 69

DUMOULIN, REV. SÉVÈRE,

arrival at Red River, 27, 38, 111

ELLICE, M.P., RIGHT HON. EDWARD,

evidence on purchase by Hudson's Bay Co. from Lord Selkirk, 16

ENGLISH COLONISTS IN AMERICA,

their method of dealing with Indian title, 94-98

FAUCHE, LIEUT. G. A.,

testimony as to grants by Lord Selkirk, 25

FEE SIMPLE, ESTATES IN. *Vide* TENURE.

FERTILE BELT,

reservation of, by Hudson's Bay Co., 20

FIDLER, MR. PETER.

survey of Red River, 11, 23, 108, 108 (*n.*), 109

some of his books found in Winnipeg, 130 (*n.*)

letter from Alex. Lean, 215

FORKS OF RED RIVER, THE.

centre of district of Assiniboia, 8

possession of Assiniboia given at, 18

removal of French Canadians to, 28

FORT DAER. *Vide* PEMBINA.

abandonment of, 8, 28

FORT DOUGLAS,

ceremonies at, 8

FORT GARRY,

old documents hidden in well of, 130

enrolled pensioners of. *Vide* PENSIONERS.

FOSS, CAPTAIN,

owns lot at Armstrong's Point, 81

FOSTER, J.,

his certificate for land, 111

"FREE MEN" OF PEMBINA,

proposed removal to that river, 105 (*n.*)

FRENCH CANADIANS,

arrival at Red River, and location, 27, 28

grants to, 43

FROG PLAIN,

lots laid out to, 11

GATIEN, MICHAEL,

lot at Red River, 63

GENERAL QUARTERLY COURT,

records of the, 118

- GEORGIA,
 plantation or colony of, 3, 5
- GERMAN CREEK,
 now the Seine River, 27
- GOULET AND SABINE
 surveys at Red River, 107
- GOULET, ROGER,
 evidence as to old plans of Red River, 112, 113
- GRANT, CUTHBERT,
 chief of half-breeds, 30
- HALF-BREEDS,
 join French Canadians at Pembina, 28
 scattered over North-West, 27
 settled at White Horse Plains, 30
 their claims to lands, 99-104
 successors of the Indians, 100, 101
 marriages of, 100
 definition of word, 100, 101
 grants to, 101, 104
 allotment lists, 102-103
 recent grants to, in remote districts, 104
- HALKETT, JOHN,
 agent of Lord Selkirk, his visit to Red River, 24, 26, 28, 60
 his sales to settlers, and conditions of, 60, 61
- HAY PRIVILEGES,
 rights of settlers, 90-92
 Hudson's Bay Co. v. Cook, 90
 practice of Council of Assiniboia, 90-92
 extent of settlers' rights, 91
 council of, appoints commission, 91
 report of, adopted, and patents granted, 91, 92
- HEAD, BART., SIR EDMUND,
 on purchase of Assiniboia, 17
- HEURTER, F. D.,
 lot at Red River, 37, 40
- HILL, CAPTAIN,
 arrives at Fort Garry with pensioners, 77
 gets grant of Armstrong's Point, 81
- HILLIER, WILLIAM,
 actions at Red River, 8, 18
- HIND, PROFESSOR,
 visit to Red River, and search for title deeds, 32

HUDSON'S BAY COMPANY,

- last of great ancient companies, 1
- lands, 1, 2
- charter, 2-5, App. A.
- monopoly of trade invalid, 2
- grant of Assiniboia, 5, App. B., 124
- reservation of jurisdiction, 6
- shares of servants in lands, 6
- grants outside Assiniboia, 8
- contest with North-West Co., 9, 10
- management of Assiniboia for Lord Selkirk, 14
- resumption of possession of Assiniboia, 15-19
- deed of surrender to queen, 19, App. Q.
- transfer of Rupert's Land. *Vide* RUPERT'S LAND.
- retired servants of, settle at Red River, 30, 33-36, 110, 111
- coalition with North-West Co., 30, App. P.
- forms of deeds to settlers, 32-34
- agreement with William McKay, 34
- grants not confined to leaseholds, 65
- agreement for sale with M. Dumas, 69
- certificates for land granted by, 70
- pensioners sent to Fort Garry. *Vide* PENSIONERS.
- grants freeholds to pensioners, 79
- recognizes Lord Selkirk's titles, 84
- titles confirmed by Canada, 84, 90
- Hudson's Bay Co. v. Cook*, hay rights' case, 90
- summary as to titles of, 92, 93
- and Indian title, 99
- no grants to settlers back of two miles on rivers, 99
- York Factory plan of settlement, 110
- records of. *Vide* RECORDS.
- mislays or suppresses records, 128, 129

INDIANS,

- grant to, and agreement with, Lord Selkirk, 12, 94, 125
- remarks on, 13
- introduction of Saulteaux to Red River by North-West Co., 13
- friendly to settlers, 52
- title of, generally, 14, 20, 94-103
 - to "outer two miles," 91
- Chancellor Kent on, 94-96
- opinions of Supreme Court, U.S., on, 94, 95
 - Chalmers, 96
- "Councells' opinion" on, 1675.. 96
- New England Puritans' recognition of, 96
- Canada's manner of dealing with, 96-103
- opinions of Chancellor Boyd and Ontario Courts, 96
 - Supreme Court of Canada, 97
- obiter dictum* of Privy Council on, 99

INTERNATIONAL BOUNDARY,

establishment of, 8, 28, 115

ISBISTER, ALEXANDER K.,

his lease from Hudson's Bay Co., and evidence, 65

JUDGES OF MANITOBA,

erroneous views on Assiniboia tenures, 22, 86

~~KEALEY~~⁷ *KEALEY* v. *MOYSES*,

case on Red River lands, 68, 121

KEMP, MR. WILLIAM,

his surveys at Red River, 110-113

KENT, CHANCELLOR,

on Indian title, 94-96

KILLAM, HON. MR. JUSTICE,

opinion of, 132

LAGIMONIERE, J. B.,

lot at Red River, 37, 39

LAND TITLES OFFICE AT WINNIPEG,

investigation of titles by, 2, 87-89

LAND, TRANSFER OF,

method of, at Red River, 130-133

evidence of J. H. McTavish, 131

form of order to Hudson's Bay Co., 131

opinion of Mr. Justice Killam, 132

LA SALLE RIVER,

"staked claims" on, 105

LEAN, ALEX.,

letter to Peter Fidler, 215

LEASE,

form of Lord Selkirk's, to settlers, 52

peculiar covenants in same regarding colony, 56-59

long, conversion of, into freehold in Ohio and Mass., 59

remarks of Mr. Brydges on, 69

peculiar, to John Bruce, and remarks on, 71-75

LEASEHOLD ESTATE. *Vide* TENURE.

LOGAN, ALEXANDER,

his property and papers at Winnipeg, 46, 47

LOGAN, NATHANIEL,

compiler of Register B, 68

LOGAN, ROBERT,

sheriff and councillor of Assiniboia, 45

purchase of Fort Douglas, 46

form of conveyance, 47

lessee under Lord Selkirk, 53

LONG, MAJOR STEPHEN S., U.S.A.,
establishes international boundary, 28

MANITOBA,

primogeniture in, prior to transfer, 1, 2

MANITOBA ACT, THE,

titles under, 22, 84-90

provisions for extinguishing Indian title, 99

MARYLAND,

plantation or colony of, 3-5

MASSACHUSETTS BAY,

plantation of, 3

MATTHEY, CAPTAIN,

engages 20 Wattevilles for Lord Selkirk, 26

MAY, COLONEL,

agreement with Swiss settlers, 29

McBEATH, ALEXANDER,

allotment of, 23

McDERMOT v. FANYANT,

land case tried at Fort Garry, 67

McDONNELL, GOVERNOR MILES,

appointment and proceedings at Red River, 7, 9, 10, 18

letter regarding leases and temporary grants, 52

McDONELL, GOVERNOR ALEXANDER,

destroys records of Assiniboia, 21, 117

McKAY, WILLIAM,

agreement with Hudson's Bay Co., 34

McTAVISH, GEORGE S.,

carries away important document, 30

McTAVISH, J. H.,

evidence as to tenure at Red River, and register, 68, 121

hides old documents in Fort Garry well, 130

evidence as to method of transfer, 130, 131

MILL, THE COLONY,

conveyance of, to Robert Logan, 46, 47

MISTAKES OF CROWN. *Vide* CANADA.

MORRIS, LIEUT.-GOVERNOR,

his "Treaties with the Indians," 7

MURRAY, ALEXANDER,

allotment of, 23

NEWCOMBE, MR. E. L.,

report on Assiniboia tenures, 88-89

NEW ENGLAND PURITANS,

recognize Indian title, 96

NORTH-WEST COMPANY,

- post at Red River, 9
- contest with Hudson's Bay Co., 9, 10, 24 (*n.*), App. F.
- introduction of Saulteaux to Red River by, 13
- coalition with Hudson's Bay Co., 30, App. P.

NORTH-WEST TERRITORIES,

- transfer to Canada, 19
- recent grants to early settlers in, 104

O'DONOHUE, W. B.,

- makes fraudulent entries in Register B, 121

ONTARIO, COURTS OF,

- on Indian title, 97, 98

"ORIGINAL WHITE" SETTLERS,

- allotted lands by Canada, 17, 103, 104

ORKNEYMEN

- settled at Red River, 31

OSSINIOBOIA. *Vide* ASSINIBOIA.

PARK, JOHN,

- his certificate for land, 111

PARSONAGE CREEK,

- situation of, 11

PATENTS,

- mistakes in Crown, 2, 22, 84, 90
- superfluous in certain cases, 89, 90

PELLEY, R. P.,

- governor of Assiniboia, 45
- scarcity of his grants, 48
- letter from Bishop Provencher to, *re* Rat River Settlement, 105 (*n.*)

PEMBINA,

- Fort Daer, same place, 8
- French Canadians settle at, 28
- "Free Men" of Pembina, proposed removal to Rat River, 105 (*n.*)

PENN, WILLIAM,

- his charter to Pennsylvania, 4

PENSIONERS OF FORT GARRY,

- arrival in two drafts, 1848, 1850..75
- numbers and particulars of, 75-77
- manner of settlement and location, 76, 77
- difficulties with, 76
- some leave, 76
- search for "conditions" of service, 77
- conditions, *re* service and grant of land, 77, 78, App. L.
- Company grants freeholds to, 79
- extent and location of allotments, 79-82

PENSIONERS OF FORT GARRY—*continued.*

- lots began close to Fort Garry, 80
- error of Government in regard to, 79, 80
- evidence of George R. Turner, 80, 81
- survey made by W. G. Smith, 80
- Charles Stodgell, lot No. 1..80
- John Eagan, lot No. 2..80
- George Turner, lot No. 11..81
- Col. Caldwell's grant of Armstrong's Point, 81
- Capt. Foss gets the Point, 81
- Capt. Hill gets the Point, 81
- Thomas Picksley's lot, 81
- Joseph Robillard's lot, 81
- Mrs. John Gunn's evidence, 81
- Hudson's Bay Co.'s scheme of sub-division, 81-83, App. M.
- width of lots, 82
- Mr. Whitcher's plan of lots, 82, 83
- Government erroneously treats grants as leaseholds, 83

PLANTATIONS,

- British in America, 3

POINT DOUGLAS,

- survey and settlement of, 26, 110

PRINCE REGENT, THE,

- petition of settlers to, App. F.
- proclamation of, 10

PRIVY COUNCIL, JUDICIAL COMMITTEE OF,

- on Indian title, 98, 99

PROVENCHER, REV. J. N. (BISHOP),

- arrival at Red River, 27, 38
- correspondence with Governor Bulger, 62
- Governor Pelly regarding R. C. establishment at Rat River (*n.*), 105

PROVIDENCE,

- plantation of, 3

QUEEN, THE,

- surrender of Rupert's Land to, by Hudson's Bay Co., 30, App. Q.

RAT RIVER,

- note on early settlement of, 105 (*n.*)
- "staked claims" on, 105, 106

RECORDS OF ASSINIBOIA,

- Register A, 7 (*n.*), 125-127
- destination of, 21, 23, 117
- parchment agreement with Lord Selkirk, 29
- search for, Professor Hind, 32
- system of recording grants in Register, 33
- Register of Hudson's Bay Co. produced in court, 67
- agreement with Indians produced in court, 67

RECORDS OF ASSINIBOIA—*continued*.

evidence of J. H. McTavish as to register, 68, 69, 120
 Nathaniel Logan compiled Register B, 68, 118
 evidence of John Balsillie as to age of Register B, 69
 Register B, 118, 119, 123, 124
 entries in Register B, *re* Selkirk's grants, 83, 119–125
 Register B shows Taylor's survey, 114
 minutes of Council of Assiniboia, 124
 records of General Quarterly Court, 118
 old register prior to B, 121–123
 Hudson's Bay Co. denies existence of old vols., 121
 discovery of old registers, and description of, 122
 comparison with Register B, 123, 124
 opinion of Wood, C.J., on value of Register B, 123, 124
 meaning of term "acres granted," 124
 statutory copy of Register B, 124
 Lord Selkirk's missing registers, evidence as to, 128, 129
 search of author for, 128, 130
 culpable negligence of Hudson's Bay Co., 129, 130
 old documents concealed in Fort Garry well, 130

RED RIVER SETTLEMENT. *Vide* ASSINIBOIA.

RED RIVER SETTLERS,

mistakes in their patents, 2
 allotments to, 9, 10, 11, 22
 meeting and agreement with Lord Selkirk, 10, 11
 extent of allotments, and wood lots, 11, 22, 23, 24, 25
 "original white," 17, 103
 some Scotch desert Red River, 24 (*n.*)
 various classes of settlers, 25–31
 nature of their tenures. *Vide* TENURES, and *passim*.
 numbers of Scotch, 24 (*n.*)
 De Meuron, Watteville, and Glengarry, 25–27, 31, 32
 French Canadians, 27, 28
 some become U.S. citizens, 28
 Swiss, 29, 30, 60, 61
 location of, in 1822.. 30
 leases to, by executors of Lord Selkirk, 52
 peculiar covenants in leases, 56–59
 tenures under Lord Selkirk, summary as to, 63, 64
 sixth and final class of pensioners, 75, *et seq.*
 titles from Lord Selkirk, recognized by Hudson's Bay Co., 83
 confirmed by Canada, 84, 85
 present policy of Canada in issuing patents to, 88
 Crown patent in certain cases superfluous, 90
 hay privileges of, 90–92
 summary as to tenures of, under Hudson's Bay Co., 92, 93
 no grants from Hudson's Bay Co. back of rivers, 99
 contrasted with later "original white" settlers, 103
 "staked claims" along Rat, Seine, and La Salle Rivers, 105–106
 bogus claims along Rat, Seine, and La Salle Rivers, 106

RED RIVER SETTLERS—*continued.*

- eventual recognition by Canada, 106
- early Roman Catholic settlement at Rat River, 105 (*n.*)
- petition of, to Prince Regent, App. F.

REGISTERS OF COLONY. *Vide* RECORDS.

RETIRED SERVANTS OF HUDSON'S BAY CO., 30, 31, 34-36, 110, 111

- title deeds of, and registration, 32, 33
- certificates granted to, by Selkirk, and form of, 48-51

RHODE ISLAND,

- plantation of, 3

ROBINSON, MR. THOMAS,

- lends document, 49

ROBINSON, MR. W. J.,

- lends document, 70

ROMAN CATHOLIC MISSION,

- grant in fee from Lord Selkirk, 36-43
- Canadian seignoral tenures not in force in, 62

RUPERT'S LAND,

- name of, 3
- tenure of, 4
- transfer to Canada, 2, 14, 19, 99, App. Q.

SABINE AND GOULET

- surveys at Red River, 107

SANDISON, GEORGE,

- his certificate for lot, 50

SANDISON, JAMES,

- his certificate for lot, 49

SCARTH'S WIDOW, JOHN,

- her certificate for lot, 50

SEDGWICK, MR.,

- opinion on Assiniboia tenures, 88

SEINE RIVER,

- "staked claims" on, 105, 106

SELKIRK, LORD,

- "Silver Chief," known to Indians as, 13
- his settlers at Red River, 1
- grant of Assiniboia, 5, App. B., 125
- conditions attached to, 6
- shares of Company's servants in, 6
- prospectus of Colony, 9
- sales on leases to settlers, 9, 22, 23, *et seq.*
- visit to Red River, and grants to settlers, 10, 11, 12, 25
- treaty with Indians, 12, 13, 14, 67, 94, 125
- death of, 14, 31

SELKIRK, LORD—*continued*.

- management of estate by executors, 14
- cost of settlement to, 14
- reprisals on North-West Co., at Fort William, 26
- final grants to settlers, 31
- grant in fee to Roman Catholic Mission, 36-43
- agent at Red River, 43
- conveyance of Fort Douglas to R. Logan, 46, 47
- certificate to W. R. Smith, 48
 - Edward Wood, 49
 - James Sandison, 49
 - George Sandison, 50
 - John Scarth's widow, 50
- leases to settlers, 52-59
- grant to Christian Rickner, 61
 - Nicholas Hauffman, 61
 - Sigismond Flotron, 61
 - Charles G. Bruce, 62
 - Michael Gatien, 63
 - Joseph Watt, 63
- summary as to his tenures, 63-64
- grant to A. Wintzel, 71-75
- his titles ratified by Hudson's Bay Co., 84
- "original white" settlers under his auspices, 103
- first survey of Red River, 108
- will of, 125-127
- lands in America, 126, 127
- personal estate of, 127
- renunciation of trustees, 127
- power of attorney to Simpson and Pelly, 127
- loss of his registers, 128
- negligence of Hudson's Bay Co., 128
- evidence of Mr. Balsillie, 128

SEMPLE, GOVERNOR ROBERT,

- massacre of, 24 (*n.*)

SETTLERS. *Vide* RED RIVER SETTLERS.**SEVEN OAKS,**

- massacre of, 10

SIMPSON, GOVERNOR SIR GEORGE,

- agent for Lord Selkirk, 44
- his sales and certificates to settlers, 47-51
- evidence as to tenure, 65, 67-68

SINCLAIR v. MULLIGAN,

- case on Red River lands, 130-133

SLATER, JOHN,

- lease from Hudson's Bay Co., 66

SMITH, W. R.,

- his certificate for lot, 48

SPENCE, J.,

his certificate for land, 111

SQUATTERS,

unmolested by Hudson's Bay Co., 65, 104-106

STAKED CLAIMS,

consideration of, along rivers, 105-106

nature of right, if any, 105-106

bogus operations of claimants, 106

Solomon Venne, 106

recognized eventually by Canada, 106

STATUTES OF FRAUDS AND OF ENROLMENTS

not in force in Assiniboia, 48

ST. JOHN'S CATHEDRAL,

situation of, 11

SUPREME COURT OF CANADA,

On Indian title, 97-99

SURRENDER OF RUPERT'S LAND. *Vide* RUPERT'S LAND.

SURVEY OF ASSINIBOIA,

running lines, 1813..9

Fidler's, 11, 108

of Point Douglas, 26

Mr. Dennis' remarks on, 107

Lord Selkirk directed first, 108

commencement of, 108

Amos' plan of, 109

of Point Douglas, 110

lots of retired servants, 110, 111

Mr. Kemp's survey, 110, 114, 116

Governor Bulger on Mr. Kemp, 111, 112

Mr. James Taylor's evidence as to old plans of surveys, 112, 113

removal of plans to Ottawa, 112

loss of plans by Department, 112, 113

Mr. Roger Goulet's evidence, 113

Mr. George Taylor's survey, 114, 115

original plan lost, copy preserved, 114, 115

work of Col. Dennis' party, 115, 116

"Surveyor's Reports of Parishes" at Winnipeg, 116

plan of settlement at Forks, 116, 117

SUTHERLAND, ALEXANDER,

allotment of, 23

SWISS SETTLERS,

remain at Pembina in United States, 28

arrival and settlement at Red River, 29-30

abandonment of, for United States, 30, 31

purchase land from Selkirk, 60-62

TACHÉ, ALEXANDER, ARCHBISHOP OF ST. BONIFACE,
lends documents, 42, 70

TAYLOR, MR. GEORGE,
his survey of Red River, 112-116

TAYLOR, CHIEF JUSTICE,
remarks on Register B, 124

TAYLOR, MR. JAMES,
paper on Selkirk grant, 7
documents in possession of, 34, 49
evidence as to old plans, 112, 113

TEMPLETON v. STEWART,
suit affecting Red River lands, 86 (*n.*), 88, 89, App. N.

TENURES OF ASSINIBOIA, *passim*,
mistakes in, 2, 22, 83, 84, 90
confirmation of, by Canada, 20
of Scotch settlers, 9, 11, 22-25
of De Meuron settlers, 25-27
of French Canadian settlers, 27, 28
of Swiss settlers, 29, 30, 60, 61
of retired servants of Hudson's Bay Co., 30-36
of Roman Catholic mission, 36-43
of Mr. Robert Logan of Fort Douglas, 46, 47
of holders of certificates from Lord Selkirk, 50, 51
of Lord Selkirk, summary as to, 63, 64
under Hudson's Bay Co., freehold and leasehold, 65, *et seq.*
squatters on unoccupied lands, 65
Land Commissioner Brydges on sales at Red River, 69
of pensioners, 78, 79
Lord Selkirk's, ratified by Hudson's Bay Co., 84
mistaken opinion of Mr. Burgess as to, 86
opinion of Wood, C.J., 86, 87
 Mr. Burbidge, 88
 Sedgwick, 88
 Newcombe, 88, 89
summary as to Hudson's Bay Co.'s, 92, 93
meaning of term "acres granted" in Register B, 124

THOM, RECORDER,
explanation of term "Assiniboia," 8

TRANSFER OF LAND, METHOD OF. *Vide* LAND.

TRANSFER OF RUPERT'S LAND. *Vide* RUPERT'S LAND.

TURNER, GEORGE R.,
evidence as to pensioners, 80
note on, 80 (*n.*)

UNITED STATES,
mode of treating Indian title, 94, 97

Venne, Solomon 106

VIRGINIA,

plantation of, 3, 4

WATT, JOSEPH,

lot at Red River, 63

WHITE HORSE PLAINS,

settlement of half-breeds at, 31, 105 (*n.*)

WHITE SETTLERS. *Vide* "ORIGINAL WHITE" SETTLERS.

WHITEWAY, J.,

his certificate for land, 111

WINNIPEG,

claims to lands in, 2

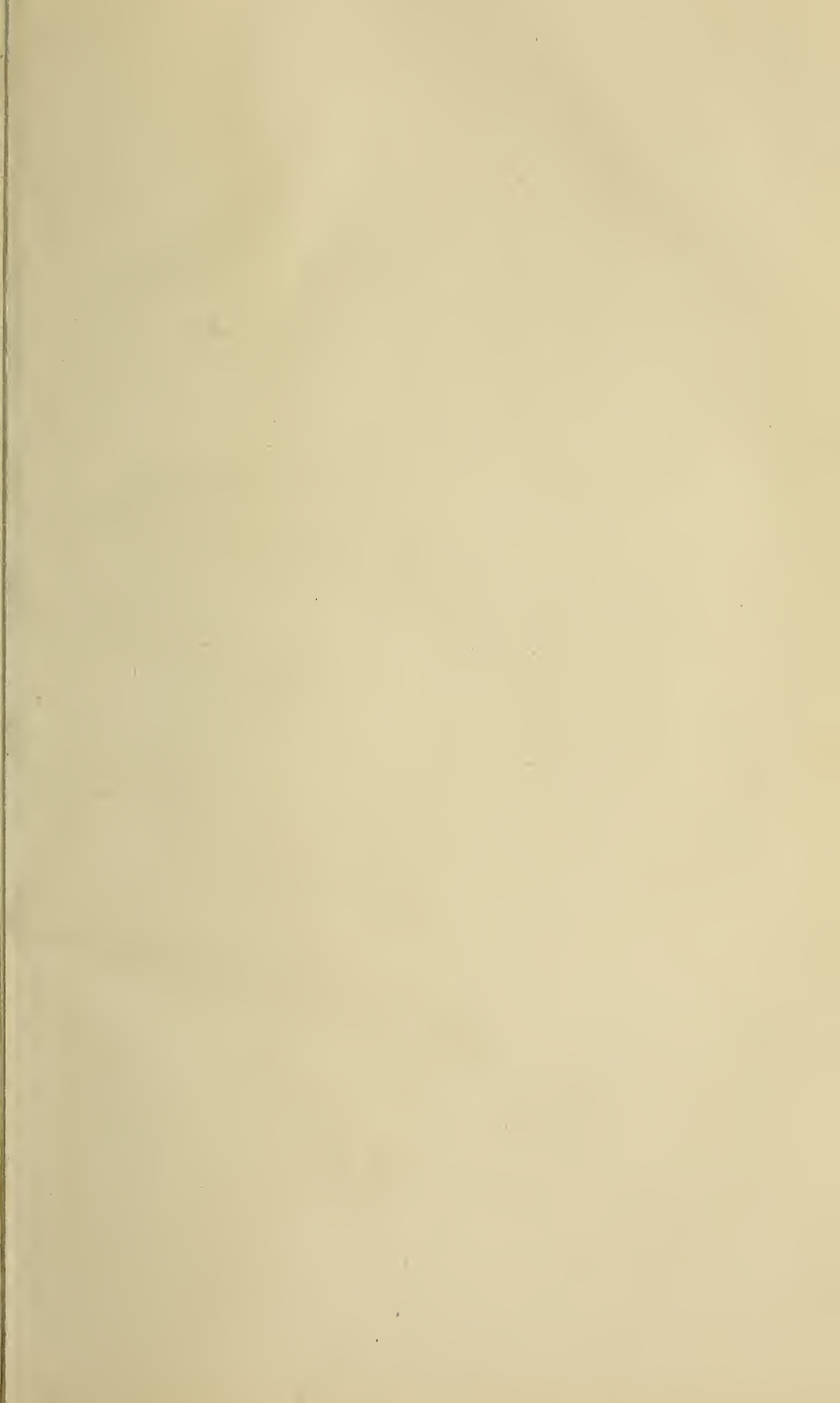
WINTZEL, ALEXANDER,

grant from Lord Selkirk, 71-75 (*n.*)

WOOD, CHIEF JUSTICE,

opinion on Assiniboia tenures, 86, 87

Register B, 123, 124



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